

# Copyright Bill

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**Bill No. 17/2021.**

*Read the first time on 6 July 2021.*

## COPYRIGHT ACT 2021

(No. of 2021)

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-



A BILL

*intituled*

An Act to repeal and re-enact the Copyright Act (Chapter 63 of the 2006 Revised Edition) to provide for copyright, the protection of performances and related rights, and to make related and consequential amendments to certain other Acts.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

PART 1  
PRELIMINARY

**Short title and commencement**

5     **1.**—(1) This Act is the Copyright Act 2021 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

(2) For the purposes of subsection (1), the same date must be appointed for all the provisions of this Act except —

- 10     (a) Division 2 of Part 9 and section 507(4)(c) (licensing of collective management organisations); and
- (b) sections 501(2) and (3) and 507(10) (jurisdiction of General Division of High Court).

**Application to things existing before appointed day**

15     **2.** Unless it expressly provides otherwise, this Act applies to a thing existing on the appointed day as it applies to a thing coming into existence after that day.

**Extension of Act to reciprocating countries**

**3.**—(1) Subject to subsection (2), regulations may prescribe that —

- 20     (a) a country is a reciprocating country; and
- (b) this Act is extended so as to apply in relation to the country or its nationals —
- (i) generally or for specified classes of cases; and
- (ii) with or without modifications or exceptions.

25     (2) A country may be prescribed as a reciprocating country only if —

- (a) in relation to works protected by copyright under the provisions of this Act —
- 30     (i) the country and Singapore are both parties to a treaty, convention or other international agreement relating to copyright; or

(ii) the Minister is satisfied that those works are or will be adequately protected under the law of the country; and

(b) in relation to the performances protected under the provisions of this Act — 5

(i) the country and Singapore are both parties to a treaty, convention or other international agreement relating to the protection of performances; or

(ii) the Minister is satisfied that those performances are or will be adequately protected under the law of the country. 10

(3) In this section and section 4, “national”, in relation to a country, means —

(a) a national, citizen or resident of the country; or

(b) a body incorporated or established under the law of the country. 15

### **Exclusion of non-reciprocating countries from Act**

4.—(1) Subject to subsection (2), regulations may prescribe that —

(a) a country is a non-reciprocating country; and

(b) either — 20

(i) this Act does not apply in relation to the country or its nationals, whether generally or for specified classes of cases; or

(ii) the application of this Act in relation to the country or its nationals is subject to modifications or exceptions. 25

(2) A country may be prescribed as a non-reciprocating country only if the Minister considers that the law of the country does not give adequate protection to —

(a) works (or any class of works) protected by copyright under this Act; or 30

(b) performances (or any class of performances) protected under this Act.

5 (3) Without limiting subsection (2), the inadequacy of protection may relate to the nature of the work or performance, or the nationality, citizenship or country of residence of the person who made the work or gave the performance.

(4) In making regulations under subsection (1)(b), the Minister must have regard to the nature and extent of the inadequacy mentioned in subsection (2).

10 (5) Regulations under subsection (1) must not deprive a person of any rights acquired under this Act before the date on which the regulations are published in the *Gazette*.

(6) In this section, “work” does not include a published edition of an authorial work.

### 15 **Savings for other laws**

**5.**—(1) Unless it expressly provides otherwise, this Act does not affect any right or privilege of any person (including the Government) under any other written law.

20 (2) This Act does not affect the operation of the law relating to breaches of trust or confidence.

### **Act binds Government**

**6.**—(1) Unless it expressly provides otherwise, this Act binds the Government.

25 (2) The Government is not liable to be prosecuted for an offence under this Act.

## PART 2

## INTERPRETATION

*Division 1 — General***General interpretation**

- 7.—(1) In this Act, unless the context otherwise requires — 5
- “1911 Act” means the Copyright Act 1911 of the United Kingdom (U.K. 1911, c. 46) insofar as that Act has effect as part of the law of Singapore;
- “1987 Act” means the Copyright Act (Cap. 63, 2006 Ed.);
- “action” means a civil action and includes a counterclaim; 10
- “adaptation” —
- (a) in relation to a literary or dramatic work, has the meaning given by section 17; and
- (b) in relation to a musical work, has the meaning given by section 18; 15
- “appointed day” means the date appointed for all provisions of this Act except those in section 1(2)(a) and (b);
- “archive” has the meaning given by section 92;
- “article” includes a copy, in electronic form, of a work;
- “artistic work” has the meaning given by section 20(1); 20
- “authorial work” has the meaning given by section 9;
- “authorised officer”, in relation to a public collection, has the meaning given by section 94;
- “body administering an educational institution” has the meaning given by section 84; 25
- “body administering an institution aiding persons with intellectual disabilities” has the meaning given by section 90;
- “body administering an institution aiding persons with print disabilities” has the meaning given by section 87;
- “broadcast” has the meanings given by sections 27 and 28; 30

“broadcasting licence” and “broadcasting licensee” have the meanings given by section 2(1) of the Broadcasting Act;

“building” has the meaning given by section 20(2);

“cable programme” has the meaning given by section 34;

5 “cable programme service” has the meaning given by section 35(1);

“commercial advantage”, in relation to an act, has the meaning given by section 74;

“commercial dealing” has the meaning given by section 73(2);

10 “commercial rental arrangement”, in relation to a computer program or a sound recording, has the meaning given by section 75;

“communicate” and “communication” have the meanings given by section 61;

15 “compilation” has the meaning given by section 13(2);

“computer program” has the meaning given by section 13(3);

“construction” includes erection and “reconstruction” has a corresponding meaning;

20 “contract of service” has the meaning given by section 2(1) of the Employment Act;

“copy” has the meanings given by the provisions in Subdivision (2) of Division 3 of Part 2;

“Copyright Tribunal” or “Tribunal” means a Copyright Tribunal established under this Act;

25 “copyright work” means a work in which copyright subsists;

“Court” means a court of competent jurisdiction;

“custodian”, in relation to a public collection, has the meaning given by section 93;

“deal commercially” has the meaning given by section 73(1);

- “Director of National Archives” means the Director of National Archives appointed under section 14B(1) of the National Library Board Act;
- “dramatic work” has the meaning given by section 15;
- “drawing” has the meaning given by section 20(2); 5
- “edition of an authorial work” includes an edition of authorial works;
- “educational institution” has the meaning given by section 83;
- “electronic” means actuated by electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy; 10
- “electronic copy”, in relation to a work or a recording of a protected performance, means a copy of the work or recording in an electronic form;
- “engraving” has the meaning given by section 20(2); 15
- “exclusive licence” and “exclusive licensee” have the meanings given by section 103;
- “film” —
- (a) has the meaning given by section 24(1); and
- (b) in relation to a television broadcast, has the meaning given by section 46(2); 20
- “flagrantly infringing online location” has the meaning given by section 99;
- “for-profit” means operated or conducted, directly or indirectly, for profit; 25
- “foreign institution aiding persons with print disabilities” has the meaning given by section 88;
- “future copyright” has the meaning given by section 140(3);
- “in electronic form” means in a form usable only by electronic means; 30
- “infringing copy” has the meaning given by section 98;

“institution” includes an educational institution;

“institution aiding persons with intellectual disabilities” has the meaning given by section 89;

5 “institution aiding persons with print disabilities” has the meaning given by section 86;

“IPOS” means the Intellectual Property Office of Singapore established by the Intellectual Property Office of Singapore Act;

“literary work” has the meaning given by section 13(1);

10 “National Archives” has the meaning given by section 2 of the National Library Board Act;

“National Heritage Board” means the National Heritage Board established by the National Heritage Board Act;

15 “National Library Board” means the National Library Board established by the National Library Board Act;

“non-profit” means not operated or conducted, directly or indirectly, for profit;

“on demand” has the meaning given by section 62;

20 “organisation” means an organisation or association of persons (whether corporate or unincorporate);

“paying audience”, in relation to a television broadcast or cable programme, has the meaning given by section 76(1);

“perform” and “performance”, in relation to an authorial work, have the meanings given by section 67;

25 “periodical publication” means an issue of a periodical publication and “same periodical publication” has a corresponding meaning;

“person with a print disability” has the meaning given by section 85;

30 “photograph” has the meaning given by section 20(2);

“premises” includes any land, building, structure and conveyance;



“prescribed international organisation” has the meaning given by section 81(2);

“prospective owner”, in relation to a future copyright, means —

(a) in relation to a future copyright that is not assigned — the person who would be the first owner of the copyright under the provisions of this Act when the copyright comes into existence; and

(b) in relation to a future copyright that is assigned — the assignee in whom the copyright will vest under the assignment when the copyright comes into existence;

“protected performance” means a performance that is protected under Part 4;

“protection period”, in relation to a performance, means the period for which the performance is protected under section 174;

“provisions of this Act” does not include subsidiary legislation made under this Act;

“public body” has the meaning given by section 2(1) of the Public Sector (Governance) Act 2018;

“public collection” has the meaning given by section 91;

“qualified individual” has the meaning given by section 77;

“qualified person” has the meaning given by section 78;

“qualifying performance” has the meaning given by section 37(1);

“re-transmission”, in relation to a broadcast, has the meaning given by section 65;

“receiving apparatus” means any device or equipment that, if operated alone or together with any other device or equipment, enables people to see or hear a work that is communicated;

“record” means a disc, tape, paper or other device in which sounds are embodied;

“recording”, in relation to a protected performance, has the meaning given by section 38(1);

“rights infringement” has the meaning given by section 97;

“rights owner” has the meaning given by section 96;

5 “sculpture” has the meaning given by section 20(2);

“Singapore resident” has the meaning given by section 79;

“sound broadcast” has the meaning given by section 30;

“sound recording” has the meaning given by section 21;

10 “sound-track”, in relation to a film, has the meaning given by section 24(2)(c);

“sounds”, in relation to a film, has the meaning given by section 24(2)(b);

“television broadcast” has the meaning given by section 29;

15 “visual images”, in relation to a film, has the meaning given by section 24(2)(a);

“wireless telegraphy” means the emitting or receiving, otherwise than over a path that is provided by a material substance, of electro-magnetic energy;

“work” has the meaning given by section 8;

20 “work of joint authorship” has the meaning given by section 10;

“working day” means any day other than a Saturday, Sunday or public holiday.

(2) Unless the context otherwise requires, the provisions of this Part apply to and for the purposes of this Act.

25 *Division 2 — Works and performances*

*Subdivision (1) — Works*

### **What is a work**

8. A “work” is —

(a) an authorial work;

- (b) a published edition of an authorial work;
- (c) a sound recording;
- (d) a film;
- (e) a broadcast; or
- (f) a cable programme.

5

*Subdivision (2) — Authorial works in general*

**What is an authorial work**

9. An “authorial work” is a literary, dramatic, musical or an artistic work.

**What is a work of joint authorship**

10

10. An authorial work is a “work of joint authorship” if —
- (a) it is produced by the collaboration of 2 or more authors; and
  - (b) the contributions of the authors are not separate.

**Reference to author includes all joint authors**

15

11. Unless expressly provided otherwise, a reference in this Act to the author of an authorial work is, in relation to a work of joint authorship, a reference to all the authors of the work.

**What is an authorial work with an identified author**

- 12.—(1) An authorial work has an identified author if —
- (a) the identity of the author is generally known or can reasonably be ascertained; or
  - (b) in the case of a work of joint authorship — the identity of at least one of the authors is generally known or can reasonably be ascertained.
- (2) For the purposes of subsection (1) —
- (a) the identity of the author of an authorial work is deemed to be generally known if —

20

25

- (i) the work is published; and
  - (ii) the true name of the author, or a name by which the author is generally known, is specified in the published work as the author; and
- 5 (b) the identity of an author is not generally known just because the pseudonym of the author is generally known.

*Subdivision (3) — Literary, dramatic and musical works*

**Literary work includes computer program and compilation**

- 13.—(1) A “literary work” includes —
- 10 (a) a compilation in any form; and
  - (b) a computer program.
- (2) A “compilation” is a compilation or table —
- (a) consisting —
    - (i) wholly or partly of the following material:
      - 15 (A) an authorial work, including a computer program;
      - (B) a published edition of an authorial work;
      - (C) a sound recording;
      - (D) a film;
      - 20 (E) a broadcast;
      - (F) a cable programme;
      - (G) a recording of a protected performance; or
    - (ii) of data other than the material mentioned in sub-paragraph (i); and
  - 25 (b) that is an intellectual creation because of the selection or arrangement of its contents.
- (3) A “computer program” is an expression (in any language, code or notation) of a set of instructions (whether with or without related information) intended to —

(a) directly cause a device with information processing capabilities to perform a particular function; or

(b) cause a device with information processing capabilities to perform a particular function after —

(i) converting the instructions into another language, code or notation;

(ii) copying the instructions in a different material form; or

(iii) both of those acts.

(4) To avoid doubt, a computer program made before 10 April 1987 (or over a period ending before that date) is a literary work.

### **Subject matter of copyright in compilations**

**14.** To avoid doubt, any copyright in a compilation —

(a) is limited to the selection or arrangement of its contents that constitutes an intellectual creation; and

(b) is in addition to, and independent of, any copyright in its contents and any other right under Part 4 (protection of performances) in relation to its contents.

### **What does a dramatic work include**

**15.—**(1) Subject to subsection (2), a “dramatic work” includes —

(a) a work of dance or mime; and

(b) a scenario or script for a film, but not a film.

(2) A work of dance or mime made before the appointed day is not a dramatic work unless it is described in writing in the form in which the show is to be presented.

### **When is a literary, dramatic or musical work made**

**16.—**(1) A literary, dramatic or musical work is made at the time when, or over the period during which, the work is first fixed in a material form, including —

(a) in writing; or

(b) by storage —

(i) in a computer;

(ii) on any medium by electronic means; or

5 (iii) on any other medium from which the work, or a substantial part thereof, can be directly reproduced.

(2) A literary, dramatic or musical work in the form of sounds embodied in an article or a thing is considered —

(a) to have been fixed in a material form; and

10 (b) to have been so fixed when those sounds were embodied in that article or thing.

*Subdivision (4) — Adaptations of  
literary, dramatic or musical works*

**What is an adaptation of a literary or dramatic work**

17. An “adaptation” of a literary work is —

15 (a) in relation to a literary work in a non-dramatic form — a version of the work (whether in its original language or in a different language) in a dramatic form;

20 (b) in relation to a literary work in a dramatic form — a version of the work (whether in its original language or in a different language) in a non-dramatic form;

(c) in relation to a literary work being a computer program — a version of the work (whether or not in the language, code or notation in which the work was originally expressed) that is not a copy of the work; and

25 (d) in relation to any literary work (whether in a non-dramatic form or dramatic form) —

(i) a translation of the work; or

(ii) a version of the work in which a story or an action is conveyed wholly or mainly through pictures.

### **What is an adaptation of a musical work**

**18.** An “adaptation” of a musical work is an arrangement or a transcription of the work.

### **Adaptation of literary, dramatic or musical work includes adaptation of substantial part thereof**

5

**19.** An adaptation of a substantial part of a literary, dramatic or musical work is to be treated as an adaptation of the work.

#### *Subdivision (5) — Artistic works*

### **What is an artistic work**

**20.—(1)** An “artistic work” —

10

(a) is any of the following:

(i) a painting, a sculpture, a drawing, an engraving or a photograph (whether the work is of artistic quality or not);

(ii) a building or a model of a building (whether the building or model is of artistic quality or not);

15

(iii) a work of artistic craftsmanship to which neither sub-paragraph (i) nor (ii) applies; but

(b) does not include a layout-design or an integrated circuit as defined in section 2(1) of the Layout-Designs of Integrated Circuits Act.

20

(2) For the purposes of this Act —

“building” includes a structure of any kind;

“drawing” includes any diagram, map, chart or plan;

“engraving” includes an etching, a lithograph, a product of photogravure, a woodcut, a print or any other similar work, but not a photograph;

25

“photograph” —

(a) is a product of —

(i) photography or a similar process; or

30

(ii) xerography; but

(b) does not include any article or thing in which the visual images of a film are embodied;

5 “sculpture” includes a cast or model made for purposes of sculpture.

*Subdivision (6) — Sound recordings*

**What is a sound recording**

21. A “sound recording” is the sounds embodied in a record, but does not include the sounds of a film.

10 **When is a sound recording made**

22. A sound recording is made when the first record embodying the sounds is produced.

**Who is the maker of a sound recording**

15 23. The maker of a sound recording is the person who owns the first record embodying the sounds when the recording is produced.

*Subdivision (7) — Films*

**What is a film; what are the visual images, sounds and sound-track of a film**

24.—(1) A “film” —

20 (a) is all the visual images embodied in a thing in a way that —

(i) the images can be shown as a moving picture by using that thing; or

(ii) that thing can be used to embody the images in another thing, and the images can be shown as a moving picture by using that other thing; and

25

(b) includes all the sounds embodied in —

(i) that thing or any part of that thing; or



(ii) any disc, tape or other device that is made available by the maker of the film to be used together with that thing.

(2) In relation to a film —

(a) “visual images” is the visual images mentioned in subsection (1)(a); 5

(b) “sounds” is the sounds mentioned in subsection (1)(b); and

(c) a “sound-track” is —

(i) the thing or any part of the thing mentioned in subsection (1)(b)(i); or 10

(ii) the disc, tape or other device mentioned in subsection (1)(b)(ii).

(3) In this section, “thing” includes an article.

### **What is the making of a film**

**25.** The making of a film is the doing of the things needed to produce the first copy of the film. 15

### **Who is the maker of a film**

**26.** The maker of a film is the person who undertakes the arrangements needed to make the film.

### *Subdivision (8) — Broadcasts*

20

### **What does it mean to broadcast (verb)**

**27.** To “broadcast” means to broadcast by wireless telegraphy.

### **What is a broadcast (noun)**

**28.** A “broadcast” is a television or sound broadcast.

### **What is a television broadcast**

25

**29.** A “television broadcast” is the visual images that are broadcast by way of television, together with any sounds broadcast for reception along with those images.

### **What is a sound broadcast**

**30.** A “sound broadcast” is any sounds broadcast except as part of a television broadcast.

### **Who is the maker of a broadcast**

5 **31.** The maker of a broadcast is —

(a) the person who broadcasts the relevant visual images or sounds (or both); and

10 (b) in the case of direct broadcasting by satellite — the person who transmits the relevant visual images or sounds (or both) to the satellite transponder.

### **Where is a broadcast made**

**32.** A broadcast is made at —

(a) the place from which the relevant visual images or sounds (or both) are broadcast; and

15 (b) in the case of direct broadcasting by satellite — the place from which the relevant visual images or sounds (or both) are transmitted to the satellite transponder.

### **When is a broadcast made**

**33.** A broadcast is made at —

20 (a) the time when the relevant visual images or sounds (or both) are broadcast; and

(b) in the case of direct broadcasting by satellite — the time when the relevant visual images or sounds (or both) are transmitted to the satellite transponder.

25 *Subdivision (9) — Cable programmes*

### **What is a cable programme**

**34.** A “cable programme” is a programme (including any item) that is included in a cable programme service.

## What is a cable programme service

35.—(1) A “cable programme service” —

(a) is a service that consists wholly or mainly of the sending of visual images or sounds (or both) by any person —

(i) by means of a telecommunication system (whether run by that person or any other person); and 5

(ii) for reception —

(A) by any means other than wireless telegraphy, at 2 or more places in Singapore (either simultaneously, or at different times in response to requests made by different users of the service); or 10

(B) by any means, at a place in Singapore for the purpose of being played or shown there to members of the public or any group of persons; but 15

(b) does not include any service under paragraph (a) if and to the extent that that service is provided for a person providing another service under that paragraph.

(2) For the purposes of subsection (1) — 20

“information” means —

(a) speech, music and other sounds;

(b) visual images;

(c) signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of visual images or sounds; or 25

(d) signals serving for the actuation or control of machinery or apparatus;

“telecommunication system” — 30

(a) means an electronic system for conveying information; and

(b) includes any apparatus that is —

(i) constructed or adapted to transmit or receive information that is to be or have been conveyed by means of a system mentioned in paragraph (a); and

(ii) situated in Singapore and —

(A) connected to but not comprised in a system mentioned in paragraph (a); or

(B) is connected to and comprised in a system mentioned in paragraph (a) that extends beyond Singapore.

(3) For the purposes of subsection (1), the person who controls the apparatus mentioned in paragraph (b) of the definition of “telecommunication system” in subsection (2) is regarded as running the relevant telecommunications system.

### **What is inclusion in a cable programme service**

**36.** A programme is included in a cable programme service only if it is included in the service by the person providing the service.

### *Subdivision (10) — Qualifying performances and recordings of protected performances*

### **What is a qualifying performance**

**37.—(1)** A “qualifying performance” is —

(a) any of the following performances:

(i) a performance (including an improvisation and a performance that uses puppets) of a dramatic work or part of the dramatic work;

(ii) a performance (including an improvisation) of a musical work or part of the musical work;

(iii) the reading, recitation or delivery of a literary work or part of the literary work, or the recitation or delivery of an improvised literary work;

- (iv) a performance of a dance;
  - (v) a performance of a circus act or a variety act or any similar presentation or show; but
- (b) not any of the following performances:
- (i) the performance of a musical work by the students or staff of an educational institution (whether on the premises of the institution or elsewhere) in the presence of an audience and in the course of the activities of the institution; 5
  - (ii) a reading, recital or delivery of any item of news and information; 10
  - (iii) a performance of a sporting activity;
  - (iv) a participation in a performance as a member of an audience;
  - (v) a performance in a National Day Parade in Singapore; 15
  - (vi) any prescribed performance.
- (2) For the purposes of subsection (1), it does not matter whether a performance is given —
- (a) before, on or after the appointed day; or 20
  - (b) in the presence of an audience or otherwise.

### **What is a recording of a protected performance**

**38.—**(1) A “recording”, in relation to a protected performance, means a sound recording of the performance or a substantial part of the performance, and includes a copy of such a recording. 25

(2) To avoid doubt, Subdivision (6) applies to recordings of protected performances as it applies to other sound recordings.

*Division 3 — Acts relating to works and performances*

*Subdivision (1) — General*

**Act done in relation to work, etc., includes act done in relation to substantial part thereof**

5     **39.**—(1) Doing an act in relation to a substantial part of a work is to be treated as doing an act in relation to the work.

(2) This section does not affect the interpretation of any reference in sections 110 and 145 to the publication, or absence of publication, of a work.

10    **Act done in relation to protected performance, etc., includes act done in relation to substantial part thereof**

**40.**—(1) Doing an act in relation to a substantial part of a protected performance is to be treated as doing an act in relation to the performance.

15    (2) Doing an act in relation to a recording of a substantial part of a protected performance is to be treated as doing an act in relation to a recording of the performance.

*Subdivision (2) — Copying*

**What is a copy of an authorial work**

20    **41.**—(1) A “copy” of an authorial work is a reproduction of the work in any material form.

(2) Without limiting subsection (1), an authorial work is reproduced in a material form if —

(a) it is stored —

- 25           (i) in a computer;
- (ii) on any medium by electronic means; or
- (iii) on any other medium from which the work, or a substantial part thereof, can be directly reproduced;

(b) it is reproduced in the form of a film;

- (c) in the case of a literary, dramatic or musical work — it is reproduced in the form of a sound recording;
- (d) in the case of an artistic work in a 2-dimensional form — a version of the work in a 3-dimensional form is produced;
- (e) in the case of an artistic work in a 3-dimensional form — a version of the work in a 2-dimensional form is produced; or
- (f) it is converted into or from a digital or other electronic machine-readable form (whether from or into a copy in the form of a film or sound recording, or otherwise).

(3) To avoid doubt, this section applies in relation to an adaptation of a literary, dramatic or musical work as it applies in relation to an authorial work.

### **What is a copy of a published edition of an authorial work**

**42.** A “copy” of a published edition of an authorial work is a reproduction of the edition (whether made by a photographic process or otherwise) in any material form.

### **What is a reasonable portion when copying a published edition of a literary, dramatic or musical work**

**43.—(1)** In the following cases, a copy of a literary, dramatic or musical work contained in a published edition of the work is taken to contain only a reasonable portion of the work for the purposes of this Act:

- (a) where the edition has 10 or more pages —
  - (i) only 10% or less of the number of pages in the edition are copied in total; or
  - (ii) if the edition is divided into chapters — the pages copied are all from the same chapter;
- (b) where the edition is an electronic edition and is not divided into pages —
  - (i) only 10% or less of the total number of bytes in the edition are copied in total;

- (ii) only 10% or less of the total number of words in that edition are copied in total;
- (iii) if it is not practicable to use the total number of words as a measure — only 10% or less of the contents of that edition are copied in total; or
- (iv) if the edition is divided into chapters — the parts copied are all from the same chapter.

(2) To avoid doubt, this section applies in relation to an adaptation of a literary, dramatic or musical work as it applies in relation to a literary, dramatic or musical work.

(3) This section does not limit the meaning of “reasonable portion” in this Act.

### **What is a copy of a sound recording**

**44.** A “copy” of a sound recording is a record —

- (a) embodying a sound recording or a substantial part of a sound recording; and
- (b) derived, directly or indirectly, from a record produced upon the making of a sound recording.

### **What is a copy of a film**

**45.** A “copy” of a film is any article or thing in which the visual images or sounds comprising the film are embodied.

### **What is a copy of a television broadcast**

**46.—(1)** A “copy” of a television broadcast is —

- (a) insofar as the broadcast consists of visual images — a film of the broadcast, and includes a copy of such a film; and
- (b) insofar as the broadcast consists of sounds — a sound recording of the broadcast, and includes a copy of such a recording.

(2) For the purposes of subsection (1), a film of a television broadcast includes —



- (a) a film of any of the visual images comprised in the programme; and
- (b) a photograph of any of those images.

**What is a copy of a sound broadcast**

**47.** A “copy” of a sound broadcast is a sound recording of the broadcast, and includes a copy of such a recording. 5

**What is a copy of a cable programme**

**48.—(1)** A “copy” of a cable programme is —

- (a) insofar as the programme consists of visual images — a film of the programme, and includes a copy of such a film; and 10
- (b) insofar as the programme consists of sounds — a sound recording of the programme, and includes a copy of such a recording.

(2) For the purposes of subsection (1), a film of a cable programme includes — 15

- (a) a film of any of the visual images comprised in the programme; and
- (b) a photograph of any of those images.

**Copy of work includes copy of substantial part** 20

**49.** A copy of a substantial part of a work is to be treated as a copy of the work.

**Copy of work includes temporary or incidental copy**

**50.—(1)** Making a copy of a work that is temporary or is incidental to some other use of the work is to be treated as making a copy of the work. 25

(2) To avoid doubt, this section applies in relation to an adaptation of a literary, dramatic or musical work as it applies in relation to an authorial work.

### **What is a copy of a recording of a protected performance**

**51.** A “copy” of a recording of a protected performance is a record —

- (a) embodying a recording of the performance or a substantial part of the performance; and
- (b) derived, directly or indirectly, from a record produced upon the making of a recording of the performance or a substantial part of the performance.

### **Copy of recording of protected performance work includes temporary or incidental copy**

**52.** Making a copy of a recording of a protected performance that is temporary or is incidental to some other use of the recording is to be treated as making a copy of the recording.

#### *Subdivision (3) — Publishing*

### **What constitutes publication of an authorial work**

**53.—(1)** Subject to subsection (2) and sections 58, 59 and 60, an authorial work is published only if copies of the work (or of an edition of the work) have been supplied to the public (whether by sale, over the Internet, or otherwise).

**(2)** The following acts are not to be treated as publishing an authorial work:

- (a) despite section 39, supplying copies of a substantial part of the work to the public;
- (b) performing a literary, dramatic or musical work;
- (c) selling or otherwise supplying records of a literary, dramatic or musical work to the public;
- (d) exhibiting an artistic work;
- (e) constructing a building or a model of a building;
- (f) selling or otherwise supplying photographs of a building, of a model of a building or of a sculpture to the public;

- (g) selling or otherwise supplying engravings of a building, of a model of a building or of a sculpture to the public.

**What constitutes publication of an edition of an authorial work**

**54.**—(1) Subject to sections 58, 59 and 60, an edition of an authorial work is published only if copies of the edition have been supplied to the public (whether by sale, over the Internet, or otherwise). 5

(2) Section 39 does not apply to subsection (1).

**What constitutes publication of a sound recording**

**55.** Subject to sections 58, 59 and 60, a sound recording is published only if copies of the recording or a part of the recording have been supplied to the public (whether by sale, over the Internet, or otherwise). 10

**What constitutes publication of a film**

**56.** Subject to sections 58, 59 and 60, a film is published only if copies of the film have been supplied to the public (whether by sale, over the Internet, or otherwise). 15

**What constitutes publication of a recording of a protected performance**

**57.** Subject to sections 58, 59 and 60, a recording of a protected performance is published only if copies of the recording or a part of the recording have been supplied to the public (whether by sale, over the Internet, or otherwise). 20

**Matters to be considered or ignored for publication, first publication, and publication before death** 25

**58.**—(1) In this section, “relevant material” means —

- (a) an authorial work;
- (b) an edition of an authorial work;
- (c) a sound recording;
- (d) a film; or

(e) a recording of a protected performance.

(2) If a publication of a relevant material is merely colourable and is not intended to satisfy the reasonable requirements of the public —

(a) the publication must be ignored for the purposes of this Act; but

(b) the publication may be considered to the extent that it may be a rights infringement or an infringement of a moral right under Division 1 or 2 of Part 7.

(3) A publication of a relevant material in Singapore or elsewhere is still the first publication if the publication and every earlier publication take place within a period of 30 days.

(4) An unauthorised act must be ignored in deciding —

(a) whether any relevant material is published;

(b) whether a publication of any relevant material is the first publication of that material; or

(c) whether any relevant material is published in the lifetime of a person.

(5) Subject to section 230(3) (publication of old works deemed to be authorised), an act is unauthorised for the purposes of subsection (4) only if —

(a) where the relevant material is a work —

(i) copyright subsists in the work and the act is not done by or with the licence of the copyright owner; or

(ii) copyright does not subsist in the work and the act is not done by or with the licence of —

(A) the author of the authorial work;

(B) the publisher of the edition;

(C) the maker of the sound recording or film; or

(D) any person lawfully claiming under the author, publisher or maker,

as the case may be; and

- (b) where the relevant material is a recording of a protected performance — the act was not done with the authority of the rights owner of the performance.
- (6) Subsections (4) and (5) do not affect —
  - (a) any provision of this Act relating to —
    - (i) the acts comprised in a copyright; or
    - (ii) acts constituting rights infringements; or
  - (b) Divisions 1 and 2 of Part 7 (moral rights).

### **Effect of acts done before appointed day**

- 59.**—(1) Sections 53, 54, 55, 56, 57 and 58 do not apply for the purposes of deciding —
- (a) whether a work has been published by virtue of an act done before the appointed day;
  - (b) whether a publication of a work before the appointed day is the first publication of the work; or
  - (c) whether a work is, by virtue of an act done before the appointed day, published in the lifetime of a person.
- (2) Despite the repeal of the 1987 Act, section 24 of that Act applies instead for those purposes (as modified, where applicable, by section 209 of that Act).
- (3) In this section, “work” means an authorial work, an edition of an authorial work, a sound recording or a film.

### **Specific acts that do not constitute publication**

- 60.**—(1) The following provisions provide that certain acts in certain circumstances are not to be treated as publication:
- (a) section 223(4) (publicising public exhibition);
  - (b) section 225(3) (making public collection available on network of public collection);
  - (c) section 226(3) (copying or communicating material for users of public collection);

- (d) section 227(3) (copying originals for use on premises of public collection);
- (e) section 228(3) (copying or communicating unpublished thesis in university library or archive);
- 5 (f) section 229(3) (copying or communicating unpublished old material in public collection);
- (g) section 233(3) (copying or communicating material for administrative purposes of public collection);
- (h) section 244(4) (copying for computational data analysis);
- 10 (i) section 278(3) (copying or communicating material in public registers);
- (j) section 281(3) (copying or communicating publicly disclosed material);
- (k) section 283(3) (data sharing within public sector);
- 15 (l) section 287 (public act).

(2) To avoid doubt, the provisions mentioned in subsection (1) do not limit section 53(2).

#### *Subdivision (4) — Communicating*

#### **What does communicate mean**

- 20 **61.**—(1) “Communicate”, in relation to a work or performance, means to transmit the work or performance by electronic means, and includes —
- (a) broadcasting the work or performance;
  - (b) the inclusion of the work or performance in a cable programme; and
  - 25 (c) making the work or performance available (on a network or otherwise) in way that it may be accessed by any person on demand.

- (2) For the purposes of subsection (1), it does not matter —
- (a) whether the transmission is over a path or a combination of paths;
  - (b) whether the path or paths are provided by a material substance or by wireless means or otherwise; and
  - (c) whether the work or performance is sent in response to a request.
- (3) “Communication” has a corresponding meaning.

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### **What does accessibility on demand mean**

**62.** A person may access a thing “on demand” if the person may access the thing from a place and at a time chosen by the person.

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### **Who is the maker of a communication**

**63.** The maker of a communication (other than a broadcast) is the person responsible for deciding the content of the communication when the communication is made.

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### *Subdivision (5) — Broadcasting, etc.*

### **What is doing an act by the reception of a broadcast**

**64.—(1)** To do an act by the reception of a broadcast is to do that act by receiving a broadcast from —

- (a) the transmission by which the broadcast is made; or
- (b) a transmission that is —
  - (i) made otherwise than by broadcasting; and
  - (ii) made simultaneously with the transmission by which the broadcast is made.

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(2) For the purposes of subsection (1), it does not matter whether the broadcast is received directly from the transmission concerned or from a re-transmission made by any person from any place.

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(3) In subsection (2), “re-transmission” —

(a) means any re-transmission (whether over paths provided by a material substance or not); and

(b) includes a re-transmission made by making use of any article or thing in which the visual images or sounds constituting the broadcast (or both) have been embodied.

### **What is a re-transmission of a broadcast**

**65.**—(1) “Re-transmission”, in relation to a broadcast, means a re-transmission of the broadcast without altering its contents.

(2) For the purposes of subsection (1), it does not matter —

(a) whether the re-transmission is simultaneous with the original transmission; and

(b) whether the technique used to make the re-transmission is the same as that used for the original transmission.

### **When is a copy of a sound recording or a film used in a broadcast**

**66.**—(1) This section applies where —

(a) a copy of a sound recording or a film is used for the purpose of making a broadcast (called in this section the primary broadcast); and

(b) a person makes a further broadcast (called in this section the secondary broadcast) by receiving and simultaneously further transmitting —

(i) the transmission by which the primary broadcast is made; or

(ii) a transmission that is —

(A) made otherwise than by broadcasting; and

(B) made simultaneously with the transmission by which the primary broadcast is made.

(2) The person making the secondary broadcast is deemed not to have used the copy for the purpose of making that broadcast.



*Subdivision (6) — Performing***What does a performance of an authorial work include**

67.—(1) A “performance” of an authorial work —

(a) includes —

(i) any mode of visual or aural presentation of the authorial work, whether the presentation is by — 5

(A) the use of any receiving apparatus;

(B) the exhibition of a film;

(C) the use of a record; or

(D) any other means; and 10

(ii) the delivery of the authorial work by way of a lecture, an address, a speech or a sermon; but

(b) does not include the communication of a work to the public.

(2) “Perform”, in relation to an authorial work, has a corresponding meaning. 15

(3) To avoid doubt, this section applies in relation to an adaptation of a literary, dramatic or musical work as it applies in relation to an authorial work.

**Performance by operating receiving apparatus** 20

68.—(1) This section applies where —

(a) any device or equipment is operated to communicate, directly or indirectly, visual images or sounds to a receiving apparatus; and

(b) those images are displayed, or those sounds are emitted, by the receiving apparatus. 25

(2) The operation of the device or equipment is not a performance.

(3) Insofar as the display of those images or the emission of those sounds is a performance of an authorial work, the performance is deemed to be given — 30

- (a) by the operation of the receiving apparatus; and
- (b) by the occupier of the premises where the receiving apparatus is situated —
  - (i) whether or not the occupier operated the receiving apparatus; but
  - (ii) only if the receiving apparatus is provided by or with the consent of the occupier.

### **Performance by operating apparatus for reproducing sounds**

**69.**—(1) This section applies where —

- (a) an authorial work is performed by operating any apparatus for reproducing sounds by using a record; and
- (b) the apparatus is provided by or with the consent of the occupier of the premises where the apparatus is situated.

(2) The occupier is deemed to be the person giving the performance (whether or not the occupier operated the apparatus).

(3) To avoid doubt, this section applies in relation to an adaptation of a literary, dramatic or musical work as it applies in relation to an authorial work.

*Subdivision (7) — Causing visual images to be seen or sounds to be heard*

### **Communication not included**

**70.** The communication of a work to the public is not to be treated as causing visual images to be seen or sounds to be heard.

### **Causing by operating receiving apparatus**

**71.**—(1) This section applies where —

- (a) any device or equipment is operated to communicate, directly or indirectly, visual images or sounds to a receiving apparatus; and
- (b) those images are displayed, or those sounds are emitted, by a receiving apparatus.

(2) The operation of the device or equipment is not to be treated as causing those images to be seen or those sounds to be heard.

(3) Insofar as the display of those images causes those images to be seen, those images are deemed to be caused to be seen —

(a) by the operation of the receiving apparatus; and 5

(b) by the occupier of the premises where the receiving apparatus is situated —

(i) whether or not the occupier operated the receiving apparatus; but

(ii) only if the receiving apparatus is provided by or with the consent of the occupier. 10

(4) Insofar as the emission of those sounds causes those sounds to be heard, those sounds are deemed to be caused to be heard —

(a) by the operation of the receiving apparatus; and

(b) by the occupier of the premises where the receiving apparatus is situated — 15

(i) whether or not the occupier operated the receiving apparatus; but

(ii) only if the receiving apparatus is provided by or with the consent of the occupier. 20

### **Causing by operating apparatus for reproducing sounds**

**72.**—(1) This section applies where —

(a) sounds are caused to be heard by operating any apparatus for reproducing sounds by using a record; and

(b) the apparatus is provided by or with the consent of the occupier of the premises where the apparatus is situated. 25

(2) The occupier is deemed to be the person causing those sounds to be heard (whether or not the occupier operated the apparatus).

*Subdivision (8) — Commercial acts***What is a commercial dealing in a thing**

73.—(1) A person deals commercially in a thing commercially if the person —

- 5           (a) sells the thing;
- (b) lets the thing for hire;
- (c) by way of trade, offers or exposes the thing for sale or hire;
- (d) distributes the thing for the purpose of trade; or
- (e) by way of trade, exhibits the thing in public.
- 10       (2) “Commercial dealing” has a corresponding meaning.
- (3) In this section, “thing” includes an article.

**What does it mean to do an act for commercial advantage**

74. A person does an act to obtain a “commercial advantage” if and only if the act is done to obtain a direct advantage, direct benefit or  
15       direct financial gain for a business or trade carried on by the person.

**What is a commercial rental arrangement relating to a computer program or sound recording**

75.—(1) Subject to subsection (2), a “commercial rental arrangement”, in relation to a computer program or sound  
20       recording, is an arrangement with the following features:

- (a) under the arrangement, a copy of the program or recording is made available by a person on terms that it must or may be returned to the person;
- (b) the arrangement is made in the course of business;
- 25       (c) the arrangement provides for the copy to be made available —
  - (i) for payment in money or money’s worth; or
  - (ii) as part of the provision of a service in return for payment in money or money’s worth.

- (2) An arrangement is not a commercial rental arrangement if —
- (a) it is for the lending of a copy of a computer program or sound recording; and
  - (b) the amount payable under it is intended to be no more than —
    - (i) the amount necessary to recover the costs, including overheads, of the arrangement; or
    - (ii) a deposit to secure the return of the copy.
- (3) In deciding whether an arrangement is a commercial rental arrangement, it is the substance and not the form of the arrangement that matters.

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### **Who is a paying audience for a television broadcast or cable programme**

**76.—**(1) A person (*X*) is a “paying audience” in relation to a television broadcast or cable programme if —

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- (a) subject to subsection (2), *X* pays to be admitted to —
  - (i) a place where the broadcast or programme is to be seen or heard; or
  - (ii) a place that contains the place where the broadcast or programme is to be seen or heard; or
- (b) *X* is admitted to a place where the broadcast or programme is to be seen or heard, in circumstances where the place supplies goods or services at prices that —
  - (i) exceed the usual prices charged at that place; and
  - (ii) are partly attributable to the facilities for seeing or hearing the broadcast or programme.

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(2) Subsection (1)(a) does not apply if —

- (a) *X* is admitted to the place in question because *X* is a resident or an inmate; or
- (b) *X* is admitted to the place in question as a member of a club or society, where —

30

- (i) payment is only for membership of the club or society; and
- (ii) the provision of facilities for seeing or hearing television broadcasts or cable programmes is only incidental to the main purposes of the club or society.

*Division 4 — Relevant persons and organisations*

*Subdivision (1) — Qualified individuals and persons*

**Who is a qualified individual**

77. An individual is a “qualified individual” if he or she is —

- (a) a Singapore citizen;
- (b) a Singapore resident; or
- (c) an individual who, if he or she had been alive on 1 November 1957, would have qualified for Singapore citizenship under the repealed Singapore Citizenship Ordinance 1957 (Ord. 35 of 1957).

**Who is a qualified person**

78. A person is a “qualified person” if the person is —

- (a) a qualified individual; or
- (b) a body corporate incorporated in Singapore under any written law.

**Who is a Singapore resident**

79. An individual is a “Singapore resident” if he or she is —

- (a) resident in Singapore; or
- (b) residing in Singapore under a valid pass lawfully issued to him or her under the Immigration Act to enter and remain in Singapore for any purpose other than a temporary purpose.

## **Country of residence not affected by temporary absence**

**80.** A person who, at a given period of time, is ordinarily resident in a country (including Singapore) but is temporarily absent from that country at any time during that period is to be treated as if he or she is resident in that country throughout that period.

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### *Subdivision (2) — International organisations*

## **What is a prescribed international organisation**

**81.—(1)** Regulations may prescribe international organisations for the purposes of this Act.

(2) A “prescribed international organisation” is an international organisation prescribed under subsection (1) and includes —

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- (a) an organ of, or office within, the organisation; and
- (b) a commission, council or other body established by the organisation or organ.

(3) In this section, “international organisation” means an organisation —

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- (a) of which 2 or more countries, or the governments of 2 or more countries, are members; or
- (b) that is constituted by persons representing —
  - (i) 2 or more countries; or
  - (ii) the governments of 2 or more countries.

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## **Legal capacity of prescribed international organisation**

**82.—(1)** A prescribed international organisation has, and is deemed to have had at all material times, the legal capacity of a body corporate for the purposes of —

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- (a) holding, dealing with and enforcing copyright; and
- (b) all legal proceedings relating to copyright.

(2) This section does not limit any legal capacity that a prescribed international organisation has under any other written law.

*Subdivision (3) — Educational institutions***What is an educational institution**

**83.** An “educational institution” is any of the following institutions or undertakings, but only if they are non-profit:

- 5           (a) an institution at which education is provided to children under 7 years of age;
- (b) a school or similar institution at which one or more of the following is provided:
  - (i) full-time primary education;
  - 10           (ii) full-time secondary education;
  - (iii) full-time pre-university education;
  - (iv) any other full-time education as may be prescribed;
- (c) a junior college, university, college of advanced education or technical and further education institution;
- 15           (d) an institution that conducts courses of primary, secondary, pre-university or tertiary education by correspondence or on an external study basis;
- (e) a school of nursing;
- (f) an undertaking within a hospital, being an undertaking that
  - 20           conducts courses of study or training in —
    - (i) providing medical services; or
    - (ii) providing services incidental to the provision of medical services;
- (g) a teacher education centre;
- 25           (h) an institution whose main function is to provide courses of study or training for the purpose of —
  - (i) general education;
  - (ii) preparing persons for a particular occupation or profession; or



- (iii) the continuing education of persons engaged in a particular occupation or profession;
- (i) any prescribed institution at which education is provided;
- (j) an undertaking, within a body administering an educational institution mentioned in paragraphs (a) to (i), whose main functions include providing teacher training for instructors in any educational institution mentioned in paragraphs (a) to (i);
- (k) an institution, or an undertaking within a body administering an educational institution mentioned in paragraphs (a) to (j), whose main functions include providing materials to any educational institution mentioned in paragraphs (a) to (j) for the purpose of assisting that institution in its teaching purposes.

#### **What is the body administering an educational institution**

**84.** The “body administering an educational institution” is —

- (a) if the institution is a body corporate — the institution; or
- (b) in any other case — the body or person (including the Government) having ultimate responsibility for administering the institution.

#### *Subdivision (4) — Persons with print disabilities*

#### **Who is a person with a print disability**

**85.** A person is a “person with a print disability” if he or she —

- (a) is blind;
- (b) has severely impaired sight;
- (c) is unable to hold or manipulate books;
- (d) is unable to focus or move his or her eyes; or
- (e) has a perceptual handicap.

### **What is an institution aiding persons with print disabilities**

**86.** An “institution aiding persons with print disabilities” is an institution —

- 5           (a) whose main functions include providing relevant material to persons with print disabilities;
- (b) that is formed, incorporated or established in Singapore; and
- (c) that is prescribed as an institution aiding persons with print disabilities.

### 10 **What is the body administering an institution aiding persons with print disabilities**

**87.** The “body administering an institution aiding persons with print disabilities” is —

- 15           (a) in a case where the institution is a body corporate — the institution; or
- (b) in any other case — the body or person (including the Government) having ultimate responsibility for administering the institution.

### 20 **What is a foreign institution aiding persons with print disabilities**

**88.** A “foreign institution aiding persons with print disabilities” is an institution —

- (a) whose main functions include providing relevant materials to persons with print disabilities; and
- 25           (b) that is formed, incorporated or established outside Singapore.

*Subdivision (5) — Persons with intellectual disabilities*

**What is an institution aiding persons with intellectual disabilities**

**89.** An “institution aiding persons with intellectual disabilities” is any educational institution or non-profit organisation — 5

- (a) whose main functions include aiding persons with intellectual disabilities; and
- (b) that is prescribed as an institution aiding persons with intellectual disabilities.

**What is the body administering an institution aiding persons with intellectual disabilities** 10

**90.** The “body administering an institution aiding persons with intellectual disabilities” is —

- (a) in a case where the institution is a body corporate — the institution; or 15
- (b) in any other case — the body or person (including the Government) having ultimate responsibility for administering the institution.

*Subdivision (6) — Public collections:  
galleries, libraries, archives and museums* 20

**What is a public collection**

**91.** A “public collection” is —

- (a) the National Archives;
- (b) the collections of the National Heritage Board prescribed to be public collections by the Minister charged with the responsibility for the Board; 25
- (c) the permanent collection of a library; or
- (d) an archive.

### **What is an archive**

**92.** An “archive” is any collection of materials (including documents and objects) of historical significance or public interest that is —

- 5           (a) in the permanent custody of a corporate or an unincorporated body;
- (b) maintained by that body for the purpose of conservation or preservation; and
- (c) not run for profit by that body.

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#### *Illustration*

Museums and galleries are examples of bodies that could have custody of archives.

### **What is the custodian of a public collection**

**93.** A “custodian” is —

- 15           (a) in relation to the National Archives — the National Library Board;
- (b) in relation to the prescribed collections of the National Heritage Board — the National Heritage Board or a body prescribed by the Minister charged with the responsibility for the Board;
- 20           (c) in relation to the permanent collection of a library — the body or person (including the Government) having ultimate responsibility for the administration of the library; and
- 25           (d) in relation to an archive — the body or person (including the Government) having ultimate responsibility for the administration of the archive.

### **Who is an authorised officer of a public collection**

**94.** An “authorised officer”, in relation to a public collection, means  
30 an authorised officer of the custodian of the public collection.

## **When is a library run for profit**

**95.** A library is not taken to be for-profit just because it is owned by a person carrying on business for profit.

### *Division 5 — Rights and rights infringements*

#### *Subdivision (1) — Common provisions*

5

## **Who is a rights owner**

**96.** A “rights owner” is —

- (a) in relation to a copyright work — the owner of the copyright; and
- (b) in relation to a protected performance — the person who is entitled to bring an action for an infringing use of the performance.

10

## **What is a rights infringement**

**97.** A “rights infringement” is —

- (a) an infringement of copyright; or
- (b) an infringing use of a protected performance.

15

## **What is an infringing copy of a copyright work or protected performance**

**98.—(1)** An “infringing copy” —

- (a) in relation to a copyright work, is a copy of the work that is —
  - (i) made in Singapore on or after the appointed day in circumstances that constitute an infringement of copyright in the work under this Act;
  - (ii) made in Singapore before the appointed day in circumstances that constitute an infringement of copyright in the work under the 1911 Act or the 1987 Act, as the case may be; or
  - (iii) made outside Singapore without the consent of the copyright owner and imported without the licence of

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the copyright owner (whether the making or importation happened before, on or after the appointed day); and

(b) in relation to a protected performance, is a recording of the performance that is —

(i) made in Singapore on or after the appointed day in circumstances that constitute an infringing use of the performance under this Act;

(ii) made in Singapore before the appointed day in circumstances that constitute an unauthorised use of the performance under the 1987 Act; or

(iii) made outside Singapore and imported without the consent of the rights owner of the performance (whether the making or importation happened before, on or after the appointed day).

(2) In subsection (1)(a), “copy”, in relation to an authorial work, means a copy of the work or of an adaptation of the work, but not a copy of a film of the work or adaptation.

### **What is a flagrantly infringing online location**

**99.**—(1) A “flagrantly infringing online location” is an online location that has been or is being used to flagrantly commit or facilitate rights infringements.

(2) In deciding whether an online location is a flagrantly infringing online location, the following matters must be considered and the appropriate weight must be given to them:

(a) whether the primary purpose of the online location is to commit or facilitate rights infringements;

(b) whether the online location makes available or contains directories, indexes or categories of the means to commit or facilitate rights infringements;

(c) whether the owner or operator of the online location demonstrates a general disregard for copyright or the protection of performances;

- (d) whether access to the online location has been disabled by orders from any court of another country or territory on the ground of or related to rights infringements;
- (e) whether the online location contains guides or instructions to circumvent measures, or any order of any court, that disable access to the online location on the ground of or related to rights infringements; 5
- (f) the volume of traffic at or frequency of access to the online location;
- (g) any other relevant matters. 10

*Subdivision (2) — Provisions relating to copyright works*

**What are acts comprised in a copyright**

**100.** An act comprised in a copyright is any act that, under this Act, the owner of the copyright has the exclusive right to do.

**What does it mean to do an act with or without the licence of copyright owner** 15

**101.** An act is done with or without the licence of a copyright owner if it is done or not done under a licence that is binding on the copyright owner.

**If there are 2 or more copyright owners for a work, which owner is relevant** 20

**102.—(1)** This section applies where (whether because of an assignment limited in accordance with section 139 or otherwise) there are 2 or more different persons who are owners (or prospective owners) of a copyright in respect of its application to — 25

- (a) the doing of different acts or classes of acts; or
- (b) the doing of one or more acts or classes of acts in different countries or at different times.

(2) The relevant copyright owner (or prospective copyright owner) for any purpose under this Act is the owner (or prospective owner) of the copyright in relation to — 30

(a) the doing of the act or class of acts relevant for that purpose; and

(b) where applicable, the doing of that act or those acts at the time or in the country relevant for that purpose.

5 (3) Without limiting subsection (2) —

(a) where this Act refers to importing an article without the licence of a copyright owner, the relevant copyright owner is the owner of the copyright in relation to the making of that type of article in the country into which the article is imported; and

10

(b) where this Act refers to selling or otherwise dealing with an article without the licence of a copyright owner, the relevant copyright owner is the owner of the copyright in relation to the making of that type of article in the country where the article is sold or otherwise dealt with.

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(4) Where this Act refers to an imported article that is made without the consent of a copyright owner —

(a) the relevant copyright owner is —

(i) the owner of the copyright in relation to the making of that type of article in the country where the imported article is made; or

20

(ii) if there is no person falling under sub-paragraph (i), the owner of the copyright in relation to the making of that type of article in Singapore; and

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(b) the article is deemed to be made with the relevant copyright owner's consent if it is made with the owner's licence (other than a compulsory licence), ignoring for this purpose any condition as to the sale, distribution or other dealings in the article after its making.

30

### **What is an exclusive licence**

**103.**—(1) An “exclusive licence”, in relation to a copyright, is a licence —



- (a) granted by the owner or prospective owner of the copyright; and
- (b) authorising the licensee, to the exclusion of any other person, to do an act that, by virtue of this Act, the owner of the copyright would, but for the licence, have the exclusive right to do.

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(2) “Exclusive licensee” has a corresponding meaning.

*Subdivision (3) — Provisions relating to protected performances*

**If there are 2 or more rights owners for a protected performance, whose authority is relevant**

10

**104.** If a performance has 2 or more rights owners —

- (a) a reference in this Act to the doing of an act in relation to the performance (or a recording of the performance) with the rights owner’s authority is a reference to the doing of the act with the authority of every rights owner; and
- (b) a reference in this Act to the doing of an act in relation to the performance (or a recording of the performance) without the rights owner’s authority is a reference to the doing of the act without the authority of every rights owner.

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*Division 6 — Miscellaneous*

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**When is a visual image or sound embodied in an article or a thing**

**105.** A visual image or sound is embodied in an article or a thing if the article or thing has been treated so that the visual image or sound can be reproduced from the article or thing, either with or without the aid of a separate device.

25

PART 3  
COPYRIGHT IN WORKS

*Division 1 — General*

**Copyright subsists only by virtue of this Act**

5     **106.** Subject to section 5(1), copyright subsists only by virtue of this Act.

**Copyrights to subsist independently**

10     **107.**—(1) The subsistence or otherwise of copyright under any provision of this Part does not affect the subsistence or otherwise of copyright under any other provision of this Part.

(2) Without limiting subsection (1), the subsistence or otherwise of copyright in an authorial work does not affect the subsistence or otherwise of copyright in another work derived wholly or partly from the authorial work.

15     **Nature of copyright**

**108.**—(1) Where a copyright owner has the exclusive right to do an act —

20         (a) the right is a right to exclude others from doing that act (or authorising the doing of that act) without the authorisation of the copyright owner; and

       (b) it is declared that the right is not a positive right of the copyright owner to do that act.

25     (2) To avoid doubt, where a copyright owner has the right to be paid equitable remuneration for the doing of an act, the right is not a positive right of the copyright owner to do that act.

*Division 2 — Authorial works*

**Conditions for copyright to subsist in unpublished authorial works**

30     **109.**—(1) Subject to the provisions of this Act, copyright subsists in an unpublished authorial work if —

- (a) the work is original; and
- (b) one of the following applies:
  - (i) the author is a qualified individual when the work is made;
  - (ii) if the work is made over a period — the author is a qualified individual for a substantial part of that period; 5
  - (iii) the work is made —
    - (A) by or under the direction or control of the Government; or 10
    - (B) on or after 10 April 1987 by or under the direction or control of a prescribed international organisation.

(2) In this section, “author”, in relation to a work of joint authorship, means any of the joint authors. 15

### **Conditions for copyright to subsist in published authorial works**

**110.**—(1) Subject to the provisions of this Act, where an authorial work is published and copyright subsists in the work immediately before its first publication by virtue of section 109 — 20

- (a) copyright continues to subsist in the work if and only if —
  - (i) the author of the work —
    - (A) is a qualified individual when the work is first published; or
    - (B) dies before the work is first published but is a qualified individual immediately before his or her death; or 25
  - (ii) the work is first published —
    - (A) in Singapore;
    - (B) by or under the direction or control of the Government; or 30

(C) on or after 10 April 1987 by or under the direction or control of a prescribed international organisation; and

(b) otherwise, the copyright expires.

5 (2) Subject to the provisions of this Act, where an authorial work is published and there is no copyright in the work immediately before its first publication, copyright subsists in the work if and only if —

(a) the work is original; and

(b) one of the following applies:

10 (i) the author of the work —

(A) is a qualified individual when the work is first published; or

15 (B) dies before the work is first published but is a qualified individual immediately before his or her death;

(ii) the work is first published —

(A) in Singapore;

(B) by or under the direction or control of the Government; or

20 (C) on or after 10 April 1987 by or under the direction or control of a prescribed international organisation.

(3) In this section, “author”, in relation to a work of joint authorship, means any of the joint authors.

25 **Conditions for copyright to subsist in buildings**

**111.**—(1) Subject to the provisions of this Act, copyright subsists in an original artistic work —

(a) that is a building in Singapore; or

(b) that is attached to, or part of, a building in Singapore.

30 (2) This section does not apply to or in relation to a building if the construction of the building was completed before 10 April 1987.

### **Nature of copyright in literary, dramatic and musical works**

**112.**—(1) For the purposes of this Act, unless the contrary intention appears, copyright in a literary, dramatic or musical work is the exclusive right to do all or any of the following acts:

- (a) to make a copy of the work; 5
- (b) to publish the work if the work is unpublished;
- (c) to perform the work in public;
- (d) to communicate the work to the public;
- (e) to make an adaptation of the work;
- (f) to do, in relation to an adaptation of the work, any of the 10  
acts specified in paragraphs (a) to (e);
- (g) in the case of a computer program — to enter into a  
commercial rental arrangement the essential object of  
which is the rental of the program.

(2) If a computer program is embodied in a machine or device and 15  
cannot be copied through the ordinary use of the machine or a device,  
subsection (1)(g) does not extend to entering into a commercial rental  
arrangement in respect of the machine or device.

(3) In subsection (2), “device” does not include —

- (a) a floppy disc; 20
- (b) a CD-ROM;
- (c) an integrated circuit; or
- (d) any other device that is ordinarily used to store computer  
programs.

### **Nature of copyright in artistic works**

**113.** For the purposes of this Act, unless the contrary intention appears, copyright in an artistic work is the exclusive right to do all or any of the following acts:

- (a) to make a copy of the work;
- (b) to publish the work if it is unpublished; 30

(c) to communicate the work to the public.

### **Duration of copyright in authorial works**

5 **114.**—(1) Where an authorial work is first published within 50 years after the end of the year in which the work is made, any copyright in the work expires —

(a) if the author is identified within 70 years after the end of the year in which the work is first published — 70 years after the end of the year in which the author dies; and

10 (b) if not — 70 years after the end of the year in which the work is first published.

(2) Where an authorial work is first published more than 50 years after the end of the year in which the work is made, but is made available to the public other than by publication within those 50 years, any copyright in the work expires —

15 (a) if the author is identified within 70 years after the end of the year in which the work is first made available to the public — 70 years after the end of the year in which the author dies; and

20 (b) if not — 70 years after the end of the year in which the work is first made available to the public.

(3) In any other case, any copyright in an authorial work expires —

(a) if the author of the work is identified within 70 years after the end of the year in which the work is made — 70 years after the end of the year in which the author dies; and

25 (b) if not — 70 years after the end of the year in which the work is made.

(4) This section is subject to section 110(1)(b) (expiration of copyright upon publication).

**Duration of copyright in authorial works — transitional provision for certain works published before 31 December 2022**

**115.**—(1) Despite section 114, any copyright in an authorial work expires 70 years after the end of the year in which the work is first made available to the public if — 5

- (a) the work is a literary, dramatic or musical work or an engraving;
- (b) the author is identified on or before 31 December 2022;
- (c) the author died before the appointed day; and 10
- (d) the work is first made available to the public —
  - (i) after the death of the author; and
  - (ii) on or before 31 December 2022.

(2) Despite section 114, any copyright in an authorial work expires 70 years after the end of the year in which the work is first published in any of the following circumstances: 15

- (a) the work —
  - (i) is first published on or before 31 December 2022; and
  - (ii) has no identified author on or before that date; 20
- (b) the work is —
  - (i) a photograph; and
  - (ii) first published on or before 31 December 2022;
- (c) the work is —
  - (i) a literary, dramatic or musical work or an engraving; and 25
  - (ii) made or first published on or before 31 December 2022 by or under the direction or control of the Government.

(3) Despite section 114, any copyright in an artistic work (other than an engraving) expires 70 years after the end of the year in which 30

the work is made if the work is made by or under the direction or control of the Government before the appointed day.

(4) This section is subject to section 110(1)(b) (expiration of copyright upon publication).

5 **Interpretation of sections 114 and 115 — making available to public; application to works of joint authorship**

**116.**—(1) This section applies for the purposes of sections 114 and 115.

10 (2) Subject to subsection (3), an authorial work is made available to the public in the following circumstances (but without limiting the expression “made available to the public”):

(a) the work (or, in the case of a literary, dramatic or musical work, an adaptation of the work) is —

(i) performed in public;

15 (ii) communicated to the public; or

(iii) published;

(b) if the work is an artistic work — the work is exhibited in public;

20 (c) if the work is an artistic work included in a film — the visual images of the film are seen in public;

(d) if the work is a building — the building is constructed;

(e) records of the work (or, in the case of a literary, dramatic or musical work, of an adaptation of the work) are —

(i) offered to the public (whether or not for sale); or

25 (ii) exposed for sale to the public.

(3) An unauthorised act (as defined by section 58(5)) must be ignored in deciding whether an authorial work is made available to the public.

(4) In the case of a work of joint authorship —

30 (a) the work has an identified author if any of the joint authors are identified; and



- (b) a reference to the death of the author is a reference to the death of the last surviving identified author.

*Illustration*

An authorial work is jointly made in 2021 by *A1* and *A2*. *A1* is identified, *A2* is not. *A1* dies in 2050. The work is not made available to the public at any time before the end of 2071. By virtue of section 114(3)(a) read with section 116(4), any copyright in the work expires in 2120.

*Division 3 — Published editions of authorial works*

**Conditions for copyright to subsist in published editions of authorial works**

**117.**—(1) Subject to the provisions of this Act, copyright subsists in a published edition of an authorial work if —

- (a) the person who first published the edition is a qualified person at the date when the edition is first published; or

- (b) the edition is first published —

(i) in Singapore;

(ii) by or under the direction or control of the Government; or

(iii) by or under the direction or control of a prescribed international organisation.

(2) Subsection (1) does not apply to an edition of an authorial work that —

- (a) reproduces a previous edition of the same work; or

- (b) was first published before 10 April 1987.

**Nature of copyright in published editions of authorial works**

**118.** For the purposes of this Act, unless the contrary intention appears, copyright in a published edition of an authorial work is the exclusive right to make a copy of that edition.

### **Duration of copyright in published editions of authorial works**

**119.** Any copyright in a published edition of an authorial work expires 25 years after the end of the year in which the edition is first published.

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### *Division 4 — Sound recordings*

### **Conditions for copyright to subsist in sound recordings**

**120.** Subject to the provisions of this Act, copyright subsists in a sound recording if —

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(a) the maker of the recording is a qualified person when the recording is made; or

(b) the recording is made or first published —

(i) in Singapore;

(ii) by or under the direction or control of the Government; or

15

(iii) on or after 10 April 1987 by or under the direction or control of a prescribed international organisation.

### **Nature of copyright in sound recordings**

**121.** For the purposes of this Act, unless the contrary intention appears, copyright in a sound recording is —

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(a) the exclusive right to do all or any of the following acts:

(i) to make a copy of the recording;

(ii) to enter into a commercial rental arrangement in respect of the recording;

(iii) to publish the recording if it is unpublished;

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(iv) to communicate the recording to the public; and

(b) if the recording has been published for commercial purposes and a person (*X*) causes the sounds embodied in the recording to be heard in public, the right to be paid equitable remuneration of an amount —

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(i) agreed between the copyright owner and *X*; or

- (ii) in default of agreement, decided by a Copyright Tribunal.

### **Duration of copyright in sound recordings**

**122.**—(1) Subject to subsections (2) and (3), any copyright in a sound recording expires —

5

- (a) if the recording is first published within 50 years after the end of the year in which the recording is made — 70 years after the end of the year in which the recording is first published; and
- (b) in any other case — 70 years after the end of the year in which the recording is made.

10

(2) If a sound recording is first published on or before 31 December 2022, any copyright in the recording expires 70 years after the end of the year in which the recording is first published.

(3) If the making of a sound recording was completed before 10 April 1987 —

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- (a) this section does not apply to the recording; and
- (b) section 522 applies instead.

### *Division 5 — Films*

### **Conditions for copyright to subsist in films**

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**123.**—(1) Subject to the provisions of this Act, copyright subsists in a film if —

- (a) the maker of the film is a qualified person for the whole or a substantial part of the period during which the film is made; or
- (b) the film is made or first published —
- (i) in Singapore;
- (ii) by or under the direction or control of the Government; or

25

- (iii) on or after 10 April 1987 by or under the direction or control of a prescribed international organisation.

(2) This section does not apply to a film if the making of the film was completed before 10 April 1987.

## 5 **Nature of copyright in films**

**124.** For the purposes of this Act, unless the contrary intention appears, copyright in a film is the exclusive right to do all or any of the following acts:

- (a) to make a copy of the film;
- 10 (b) to cause the visual images of the film to be seen in public;
- (c) to cause any sounds of the film to be heard in public;
- (d) to communicate the film to the public.

## **Duration of copyright in films**

15 **125.**—(1) Subject to subsection (2), any copyright in a film expires —

- (a) if the film is first published within 50 years after the end of the year in which the film is made — 70 years after the end of the year in which the film is first published;
- 20 (b) if the film is first published more than 50 years after the end of the year in which the film is made, but is made available to the public other than by publication within those 50 years — 70 years after the end of the year in which the film is first made available to the public; and
- 25 (c) in any other case — 70 years after the end of the year in which the film is made.

(2) If a film is first published on or before 31 December 2022, any copyright in the film expires 70 years after the end of the year in which the film is first published.

(3) For the purposes of this section —

(a) subject to paragraph (b), a film is made available to the public in the following circumstances (but without limiting the expression “made available to the public”):

(i) the film is communicated to the public; 5

(ii) the visual images of the film are seen in public;

(iii) any sounds of the film are heard in public;

(iv) the film is published; and

(b) an unauthorised act (as defined by section 58(5)) must be ignored in deciding whether a film is made available to the public. 10

### *Division 6 — Broadcasts*

#### **Conditions for copyright to subsist in broadcasts**

**126.**—(1) Subject to the provisions of this Act, copyright subsists in a broadcast if the broadcast is made from a place in Singapore by the holder of a broadcasting licence. 15

(2) This section does not apply to —

(a) a broadcast made before 10 April 1987; and

(b) a broadcast made after that date that is a repetition of a broadcast made before that date. 20

#### **Nature of copyright in broadcasts**

**127.** For the purposes of this Act, unless the contrary intention appears, copyright in a broadcast is the exclusive right to do all or any of the following acts:

(a) to make a copy of the broadcast; 25

(b) to communicate the broadcast to the public (whether by rebroadcasting it or otherwise);

(c) in the case of a television broadcast —

(i) to cause it, insofar as it consists of visual images, to be seen in public by a paying audience; or 30

- (ii) to cause it, insofar as it consists of sounds, to be heard in public by a paying audience.

### **Duration of copyright in broadcasts**

5 **128.** Subject to section 129, any copyright in a broadcast expires 50 years after the end of the year in which the broadcast is made.

### **Duration of copyright in repeat broadcasts**

**129.**—(1) This section applies to a broadcast (called in this section a repeat broadcast) that —

10 (a) repeats (whether for the first time or otherwise) an earlier broadcast (called in this section the original broadcast) that is made from a place in Singapore by the holder of a broadcasting licence; and

(b) is made by broadcasting visual images or sounds embodied in any article or thing.

15 (2) If a repeat broadcast is made within 50 years after the end of the year in which the original broadcast is made, any copyright in the repeat broadcast expires at the end of those 50 years.

20 (3) If a repeat broadcast is not made within 50 years after the end of the year in which the original broadcast is made, there is no copyright in the repeat broadcast.

### *Division 7 — Cable programmes*

#### **Conditions for copyright to subsist in cable programmes**

25 **130.**—(1) Subject to the provisions of this Act, copyright subsists in a cable programme if the programme is included in a cable programme service that is provided by a qualified person in Singapore.

(2) Subsection (1) does not apply to a cable programme that is included in a cable programme service —

30 (a) by the reception and immediate re-transmission of a broadcast; or

(b) before 10 April 1987.

### **Nature of copyright in cable programmes**

**131.**—(1) For the purposes of this Act, unless the contrary intention appears, copyright in a cable programme is the exclusive right to do all or any of the following acts:

- (a) to make a copy of the programme; 5
- (b) to communicate the programme to the public;
- (c) to cause the programme —
  - (i) insofar as it consists of visual images — to be seen in public by a paying audience; or
  - (ii) insofar as it consists of sounds — to be heard in public by a paying audience. 10

(2) An act in subsection (1) may be done by —

- (a) the reception of a cable programme; or
- (b) using any record, print, negative, tape or other article on which a cable programme has been recorded. 15

(3) To the extent that a cable programme consists of visual images —

- (a) any copyright in the programme extends to any sequence of those images that is sufficient to be seen as a moving picture; and 20
- (b) to show an infringement of any copyright in the programme, it is not necessary to prove that the act in question extends beyond any sequence that is so sufficient.

### **Duration of copyright in cable programmes**

**132.** Any copyright in a cable programme expires 50 years after the end of the year in which the cable programme is first included in the cable programme service. 25

*Division 8 — Ownership and transactions***First owner — maker of work, etc., is default first owner**

**133.**—(1) Subject to the provisions of this Act, the first owner of copyright in a work is —

- 5           (a) in the case of an authorial work — subject to subsection (2), the author;
- (b) in the case of a published edition of an authorial work — the publisher;
- (c) in the case of a sound recording — the maker of the recording;
- 10           (d) in the case of a film — the maker of the film;
- (e) in the case of a broadcast — the broadcasting licensee that made the broadcast; and
- (f) in the case of a cable programme — the person providing the cable programme service in which the programme was included.
- 15

(2) If copyright subsists in a work of joint authorship only because one or more (but not all) of the joint authors are qualified individuals, subsection (1)(a) does not confer ownership of the copyright on a joint author who is not a qualified individual.

20

(3) Subsections (1) and (2) are subject to any contrary intention in —

- 25           (a) any written agreement made on or after the appointed day by the person who would otherwise be the first owner of a copyright under those subsections; or
- (b) any agreement before the appointed day by the person who would otherwise be the first owner of a copyright under those subsections.

**First owner — copyright created in the course of employment**

30    **134.**—(1) This section applies where, in the course of a contract of service, the employee —

- (a) makes an authorial work; or



(b) does any of the following on or after the appointed day:

- (i) makes a sound recording, film or broadcast;
- (ii) provides a cable programme service in which a cable programme is included;
- (iii) publishes an edition of an authorial work. 5

(2) The first owner of any copyright in the relevant work is to be determined according to this section (and not section 133).

(3) Subject to subsection (4), the employer is the first owner of any copyright in the relevant work.

(4) Where — 10

- (a) the relevant work is a literary work, a dramatic work or an artistic work;
- (b) the employer is the proprietor of a periodical; and
- (c) the work is made for publication in a periodical,

then — 15

(d) if the work is made on or after 10 April 1987 —

(i) the employer is the first owner of any copyright in the work only to the extent that the copyright relates to —

(A) publishing the work in any periodical; or 20

(B) making a copy of the work for the purpose of its being so published; and

(ii) the employee is otherwise the first owner of any copyright in the work; and

(e) if the work was made before 10 April 1987, the employee is entitled to restrain the publication of the work otherwise than in a periodical. 25

(5) Subsections (3) and (4) are subject to any contrary intention in —

(a) any written agreement made between the employer and the employee on or after the appointed day; or 30

(b) any agreement made between the employer and the employee before the appointed day.

(6) In this section —

“periodical” means a newspaper, magazine or similar periodical, and includes an online periodical;

“relevant work” means a work mentioned in subsection (1).

**First owner — sound recordings, films and certain authorial works commissioned before appointed day**

**135.**—(1) This section applies where —

(a) one party (*X*) entered into an agreement with another party (*Y*) before the appointed day;

(b) pursuant to the agreement, *X* does any of the following (whether before, on or after the appointed day):

(i) takes a photograph;

(ii) paints or draws a portrait;

(iii) makes an engraving;

(iv) makes a sound recording;

(v) makes a film;

(c) the things mentioned in paragraph (b) are not done in the course of a contract of service (whether with *Y* or any other person); and

(d) *Y* provides valuable consideration pursuant to the agreement.

(2) The first owner of any copyright in the commissioned work is to be determined according to this section (and not section 133).

(3) Subject to subsections (4), (5) and (6), *Y* is the first owner of any copyright in the commissioned work.

(4) Where —

(a) the agreement is made on or after 10 April 1987 but before the appointed day;

(b) the commissioned work is a photograph, a portrait or an engraving; and

(c) *Y* requires the commissioned work for any particular purpose,

that purpose must be communicated to *X* and *X* is entitled to restrain the doing, otherwise than for that particular purpose, of any act comprised in the copyright in the commissioned work. 5

(5) Where —

(a) the agreement was made before 10 April 1987; and

(b) the commissioned work is a sound recording, 10

the first owner of any copyright in the recording is the person who would be the first owner under the law applicable when the agreement was made.

(6) Subsections (3), (4) and (5) are subject to any contrary intention in — 15

(a) any written agreement made between *X* and *Y* on or after the appointed day; or

(b) any agreement made between *X* and *Y* before the appointed day.

(7) In this section — 20

(a) where the agreement mentioned in subsection (1)(a) was made before 10 April 1987, “photograph” includes photo-lithograph and a work produced by a process similar to photography; and

(b) “commissioned work” means a work mentioned in subsection (1)(b). 25

### **First owner — Government and prescribed international organisations**

**136.**—(1) Despite subsections (3) and (4) and sections 133, 134 and 135, the Government is the first owner of — 30

(a) any copyright in an unpublished authorial work made by or under the direction or control of the Government (including any copyright in the work after it is published);

5

(b) any copyright in a published authorial work subsisting by virtue of section 110, if the work is first published by or under the direction or control of the Government;

(c) any copyright in a published edition of an authorial work, if —

10

(i) the edition is first published on or after the appointed day by or under the direction or control of the Government; or

15

(ii) the edition is first published before the appointed day by or under the direction or control of the Government and copyright subsists in the edition only by virtue of section 117(1)(b)(ii); and

(d) any copyright in a sound recording or film, if the recording or film is made or first published by or under the direction or control of the Government.

(2) Subsection (1) is subject to any contrary intention in —

20

(a) any written agreement made by the Government on or after the appointed day; or

(b) any agreement made by the Government before the appointed day.

25

(3) Despite sections 133, 134 and 135, if copyright subsists in the following works only by virtue of the work being made or first published by or under the direction or control of a prescribed international organisation, the organisation is the first owner of the copyright:

30

(a) an unpublished authorial work;

(b) a published authorial work;

(c) a published edition of an authorial work;

(d) a sound recording;

(e) a film.

(4) Subsection (3) is subject to any contrary intention in —

(a) any written agreement made by the organisation on or after the appointed day; or

(b) any agreement made by the organisation before the appointed day. 5

### **Transfer of copyright**

**137.** Copyright may be transferred as personal or moveable property by —

(a) assignment; 10

(b) testamentary disposition; or

(c) operation of law.

### **Assignment — formalities**

**138.** An assignment of copyright is valid only if it is —

(a) made in writing; and 15

(b) signed by or on behalf of the assignor.

### **Assignment — partial assignment**

**139.** An assignment of copyright may be limited, but only in one or more of the following ways:

(a) to some but not all the types of acts comprised in the copyright; 20

(b) to a part but not the whole of each type of act comprised in the copyright;

(c) to a part of the whole duration of the copyright;

(d) in the case of copyright in sound recordings — to the whole or a part of the right to be paid equitable remuneration under section 121(b). 25

### **Assignment — assignment of future copyright**

**140.**—(1) A future copyright may be assigned by the person who would be the copyright owner when the copyright comes into existence.

5 (2) Where a future copyright is assigned, the copyright will, when it comes into existence —

(a) vest in the assignee or the assignee’s successor in title, as the case may be; and

10 (b) not vest in the person who would otherwise be the first owner under section 133, 134, 135 or 136.

(3) In this section and section 141, “future copyright” means a copyright that will come into existence in the future.

### **Licences — licence of future copyright**

15 **141.**—(1) A licence may be granted in respect of a future copyright by the person who would be the copyright owner when the copyright comes into existence.

(2) Section 143 applies to a licence of a future copyright as it applies to the licence of a subsisting copyright.

### **Licences — formalities for exclusive licence**

20 **142.** An exclusive licence of a copyright is valid only if it is —

(a) made in writing; and

(b) signed by or on behalf of the owner or prospective owner of the copyright.

### **Licences — licence binds successors in title to copyright except bona fide purchaser**

25 **143.** Where the owner of a copyright grants a licence of the copyright —

30 (a) in the case of a licence granted on or after 1 July 2004 to the Government or a public body — the licence binds every successor in title to the copyright; and

- (b) in any other case — the licence binds every successor in title to the copyright, but not —
  - (i) a successor in title who purchased the title in good faith for valuable consideration and without actual or constructive notice of the licence; or 5
  - (ii) a person who derives title from that successor.

**Death — devolution of copyright coming into existence after would-be owner dies**

**144.**—(1) This section applies where a copyright comes into existence after the death of the person who would have been the copyright owner had he or she been alive. 10

(2) The ownership of the copyright is to devolve as if —

- (a) the copyright existed immediately before the person's death; and
- (b) the person had then been the copyright owner. 15

(3) Despite sections 133, 134, 135 and 136, the person to whom the copyright devolves is the first owner of the copyright.

**Death — bequest of manuscript, etc., includes any copyright therein**

**145.**—(1) This section applies to a bequest (whether specific or general) if — 20

- (a) the testator dies on or after 10 April 1987;
- (b) the bequest entitles a person, beneficially or otherwise, to —
  - (i) the manuscript of a literary, dramatic or musical work; or 25
  - (ii) an artistic work; and
- (c) the work is not published during the testator's lifetime.

(2) Subject to any contrary intention in the testator's will, the bequest is to be treated as including a bequest of any copyright in the 30

work insofar as the testator owned the copyright immediately before his or her death.

(3) In this section, “manuscript”, in relation to an authorial work, means an original document (whether written by hand or not) embodying the work.

*Division 9 — Infringement of copyright*

*Subdivision (1) — What is an infringement of copyright*

**Infringement by doing act comprised in copyright**

**146.**—(1) Subject to the provisions of this Act, copyright is infringed if —

- (a) a person does in Singapore, or authorises the doing in Singapore of, any act comprised in the copyright; and
- (b) the person neither owns the copyright nor has the licence of the copyright owner.

(2) For the purposes of subsection (1) —

- (a) in the case of a sound recording — it does not matter whether an act is done by directly or indirectly making use of a copy of the recording; and
- (b) in the case of a broadcast or a cable programme — it does not matter whether an act is done —
  - (i) by the reception of the broadcast or programme; or
  - (ii) by making use of any article or thing in which the visual images and sounds comprised in the broadcast or programme are embodied.

**Infringement by importation for commercial dealing, etc.**

**147.**—(1) Subject to the provisions of this Act, copyright in a work is infringed if —

- (a) a person imports an article for the purpose of —
  - (i) commercial dealing; or



- (ii) distributing the article to an extent that will prejudicially affect the copyright owner;
- (b) the article is imported without the licence of the copyright owner; and
- (c) the person knows or ought reasonably to know that the article was made without the consent of the copyright owner. 5

(2) For the purposes of subsection (1), it does not matter whether the article is made before, on or after the appointed day.

(3) This section does not limit section 146. 10

### **Infringement by commercial dealing, etc.**

**148.**—(1) Subject to the provisions of this Act, copyright in a work is infringed if —

- (a) a person does any of the following acts in Singapore:
  - (i) deals commercially in an article; or 15
  - (ii) distributes an article to an extent that will prejudicially affect the copyright owner;
- (b) the act is done without the licence of the copyright owner; and
- (c) the person knows or ought reasonably to know that — 20
  - (i) if the article is made in Singapore — the making of the article infringed the copyright; and
  - (ii) if the article is imported — the article was made without the consent of the copyright owner.

(2) For the purposes of subsection (1) — 25

- (a) it does not matter whether the article is made before, on or after the appointed day; and
- (b) an article made before the appointed day is to be treated as having been made in infringement of copyright if it was made in infringement of copyright under the 1911 Act or the 1987 Act, as the case may be. 30

(3) This section does not limit section 146.

**Accessory to imported article to be ignored for purposes of sections 147 and 148 in certain circumstances**

**149.**—(1) This section applies where —

- 5 (a) an imported article includes an accessory;
- (b) the accessory is or embodies any of the following material:
  - (i) an authorial work;
  - (ii) a published edition of an authorial work;
  - (iii) a sound recording;
  - 10 (iv) a film;
- (c) copyright subsists in the material; and
- (d) the article (considered apart from the accessory) is not an infringing copy.

15 (2) Despite section 147, the copyright in the material is not infringed by the importation of the article.

(3) Despite section 148, the copyright in the material is not infringed by any commercial dealing in, or distribution of, the imported article.

20 (4) To avoid doubt, nothing in this section affects the operation of this Act in relation to an authorial work, a published edition, a sound recording or a film that is embodied in the imported article.

(5) In this section, “accessory”, in relation to an article —

- (a) means one or more of the following:
  - (i) a label affixed to, or displayed on, the article;
  - 25 (ii) the article’s packaging or container;
  - (iii) a label affixed to, or displayed on, the article’s packaging or container;
  - (iv) a leaflet, pamphlet, certificate, warranty, brochure, written instruction or other information incidental to
  - 30 the article and provided with the article on its sale;

- (v) an instructional sound recording or film incidental to the article and provided with the article on its sale; but
- (b) does not include —
  - (i) a copy of an authorial work that is incorporated into the surface of the article and is a permanent part of the article; 5
  - (ii) a copy of an authorial work that cannot be separated from the article without making the article unsuitable for its ordinary use; or 10
  - (iii) a manual for use in connection with, and meant to be sold together with, computer software.

**Infringement by making device or providing service, etc., to access works communicated without authority**

- 150.**—(1) Subject to the provisions of this Act, copyright in a work is infringed by a person (*X*) if — 15
- (a) the work is communicated to the public without the copyright owner’s authority;
  - (b) *X* does any of the following acts (whether before or after the work is so communicated): 20
    - (i) makes a device to obtain a commercial advantage;
    - (ii) deals commercially in a device;
    - (iii) imports a device for the purpose of commercial dealing;
    - (iv) distributes a device to an extent that will 25  
prejudicially affect the copyright owner;
    - (v) offers to the public, or provides, a service —
      - (A) in exchange for payment; or
      - (B) together with the sale of a device;
  - (c) the device or service is capable of facilitating access to the 30  
work; and

(d) *X* knows or ought reasonably to know that the device or service —

(i) is capable of facilitating access to works communicated to the public without the authority of their copyright owners; and

(ii) has only a limited commercially significant purpose or use other than that capability.

(2) In this section —

“device” includes a component of a device, and a computer program;

“service” includes a subscription service and the provision of information.

**Infringement by failure to pay equitable remuneration for causing sounds embodied in commercially published sound recordings to be heard in public**

**151.**—(1) Subject to the provisions of this Act, copyright in a sound recording is infringed if a person fails to pay equitable remuneration to the copyright owner in circumstances to which section 121(*b*) applies.

(2) This section does not limit section 146.

**Exceptions to infringement**

**152.**—(1) Part 5 (permitted uses) applies.

(2) The following written laws also provide for exceptions to copyright infringement:

(a) section 25(5) of the Newspaper and Printing Presses Act (copies of declared foreign newspapers);

(b) section 57(2) of the Patents Act (reproduction or publication of models and documents in connection with Government use);

(c) section 108(6) of the Patents Act (publication of patent specification or application);

- (d) section 45(6) of the Registered Designs Act (reproduction or publication of models and documents in connection with Government use).

*Subdivision (2) — Action for copyright infringement*

**Action for copyright infringement**

5

**153.**—(1) Subject to the provisions of this Act, an action against a person for an infringement of copyright may be brought in the Court by —

(a) the copyright owner; or

(b) if an exclusive licence of the copyright is in force at the time of the infringement — the exclusive licensee.

10

(2) The exclusive licensee’s right of action under subsection (1)(b) is concurrent with the copyright owner’s right of action under subsection (1)(a).

(3) This section does not —

15

(a) give an exclusive licensee any right against a copyright owner; or

(b) affect any right that an exclusive licensee has against a copyright owner.

**Limitation of action**

20

**154.** An action may not be brought for an infringement of copyright more than 6 years after the infringement takes place.

**Remedies and border enforcement measures**

**155.** Part 6 applies, subject to Subdivision (3) of this Division.

*Subdivision (3) — Infringement action where  
exclusive licensee has concurrent right of action*

**Interpretation of this Subdivision**

**156.** In this Subdivision —

5 “infringement” means an infringement of copyright for which  
the copyright owner and the exclusive licensee of the  
copyright have concurrent rights of action;

“infringement action” has a corresponding meaning;

10 “party” means the copyright owner or the exclusive licensee, as  
the case may be.

**Application of this Subdivision**

**157.**—(1) This Subdivision applies where an action for an  
infringement of copyright may be brought by the copyright owner  
and the exclusive licensee of the copyright.

15 (2) This Subdivision does not apply in relation to a licence granted  
before 10 April 1987.

**Joinder and costs**

**158.**—(1) This section applies if the copyright owner or the  
exclusive licensee (but not both) brings an infringement action.

20 (2) Unless the Court orders otherwise, the party that brought the  
action may proceed with the action without joining the other party as  
a claimant or adding the other party as a defendant.

25 (3) If the other party is added as a defendant, that other party is not  
liable for any costs in the action unless that other party files and  
serves a notice of intention to contest or not contest the claim and  
takes part in the proceedings.

**Same defences and same remedies available**

**159.**—(1) This section applies if the exclusive licensee brings an  
infringement action.

(2) A defendant in the action is entitled to the same defences under this Act that would be available to the defendant if the action had been brought by the copyright owner.

(3) Subject to this Subdivision, the exclusive licensee is entitled to the same remedies that the copyright owner would be entitled to under Division 1 of Part 6 if the action had been brought by the copyright owner.

(4) The remedies of the exclusive licensee are concurrent with the remedies of the copyright owner.

### **Assessment of damages**

**160.**—(1) This section applies if —

- (a) the copyright owner or the exclusive licensee brings an infringement action for an infringement; and
- (b) the other party is not a claimant in that action.

(2) If the Court orders the payment of damages or statutory damages for the infringement, the following matters must be considered in assessing damages or statutory damages:

- (a) any right of action exercisable by the other party under that section in respect of the infringement;
- (b) if the action is brought by the exclusive licensee — any liabilities (whether for royalties or otherwise) to which the licence is subject;
- (c) if a separate infringement action is brought by the other party for the infringement — any pecuniary remedy already awarded to the other party under section 305 in respect of the infringement.

### **Apportionment of profits**

**161.**—(1) This section applies if the copyright owner or the exclusive licensee brings an infringement action for an infringement (whether or not the other party is also a claimant in that action).

(2) If the Court orders an account of profits to be taken in respect of the infringement, the Court must —

(a) apportion the profits between the copyright owner and the exclusive licensee in a way the Court considers just; and

5 (b) give directions to give effect to that apportionment.

(3) Subsection (2) is subject to any contrary agreement between the copyright owner and the exclusive licensee.

### **Separate actions for same infringement**

10 **162.**—(1) This section applies if the copyright owner and the exclusive licensee bring separate actions for the same infringement.

(2) If there is a final order in one action —

(a) for damages or statutory damages to be paid in respect of the infringement; or

15 (b) to take an account of profits in respect of the infringement, the Court may not make an order to take an account of profits in respect of that infringement in the other action.

(3) If there is a final order in one action to take an account of profits in respect of the infringement, the Court may not make an order for the payment of damages or statutory damages for that infringement in  
20 the other action.

### *Subdivision (4) — Presumptions in infringement actions*

#### **Application**

**163.**—(1) This Division applies in an action for copyright infringement.

25 (2) The presumptions in this Division do not apply if the contrary is proved.

#### **Presumption that copyright subsists if not disputed, etc.**

**164.**—(1) Copyright is presumed to subsist in a work if —

30 (a) the defendant does not put in issue the question whether copyright subsists in the work;



- (b) the defendant puts that question in issue, but does not satisfy the Court that this is done in good faith; or
- (c) the defendant puts that question in issue in good faith, but an affidavit is made —
  - (i) by or on behalf of the claimant; and
  - (ii) asserting facts relevant to showing that copyright subsists in the work.

5

(2) The affidavit mentioned in subsection (1)(c) is to be admitted in evidence and the facts mentioned in subsection (1)(c)(ii) are presumed to be true.

10

(3) Subsections (1)(c) and (2) do not apply if the Court directs that oral evidence be adduced to prove the matters stated in the affidavit.

(4) If the defendant —

- (a) puts in issue the question whether copyright subsists in a work;
- (b) causes, as a result, unnecessary costs or delay in the proceedings; and
- (c) does not satisfy the Court that the question is put in issue in good faith,

15

the Court may order that —

20

- (d) the defendant is not allowed any costs in the action; and
- (e) the defendant is to pay to the other parties any costs that the defendant caused them to incur.

**Presumption that claimant owns copyright if not disputed, etc.**

**165.**—(1) This section applies if copyright is proved (or presumed by section 164) to subsist in a work.

25

(2) The claimant is presumed to own the copyright if —

- (a) the defendant does not put in issue the question whether the claimant owns the copyright;
- (b) the defendant puts that question in issue, but does not satisfy the Court that this is done in good faith; or

30

(c) the defendant puts that question in issue in good faith, but an affidavit is made —

(i) by or on behalf of the claimant; and

(ii) asserting facts relevant to showing that the claimant owns the copyright.

(3) The affidavit mentioned in subsection (2)(c) is to be admitted in evidence and the facts mentioned in subsection (2)(c)(ii) are presumed to be true.

(4) Subsections (2)(c) and (3) do not apply if the Court directs that oral evidence be adduced to prove the matters stated in the affidavit.

(5) If the defendant —

(a) puts in issue the question whether the claimant owns the copyright in a work;

(b) causes, as a result, unnecessary costs or delay in the proceedings; and

(c) does not satisfy the Court that the question is put in issue in good faith,

the Court may order that —

(d) the defendant is not allowed any costs in the action; and

(e) the defendant is to pay to the other parties any costs that the defendant caused them to incur.

### **Presumption of authorship where name appears**

**166.**—(1) This section applies if —

(a) either —

(i) a name purporting to be that of the author (or a joint author) of an authorial work appears on a published copy of the work; or

(ii) a name purporting to be that of the author (or a joint author) of the work appears on an artistic work when it is made; and

- (b) the name is —
  - (i) a person's true name; or
  - (ii) a name by which a person is commonly known.
- (2) The person is presumed —
  - (a) to be the author (or a joint author) of the authorial work; and 5
  - (b) to have made the work in circumstances to which sections 134 and 135 (works made in the course of employment or under commission) do not apply.

**Presumptions where authorial work is first published in Singapore** 10

- 167.**—(1) This section applies if —
- (a) an infringement action is brought in relation to an authorial work;
  - (b) the presumptions in section 166 are not applicable; 15
  - (c) it is proved that —
    - (i) the work is first published in Singapore;
    - (ii) the first publication took place within the 70 years immediately before 1 January of the year in which the action is brought; and 20
    - (iii) a name purporting to be that of the publisher appears on the first published copies of the work; and
  - (d) the name is —
    - (i) a person's true name; or
    - (ii) a name by which a person is commonly known. 25
- (2) Copyright is presumed to subsist in the work.
- (3) The person is presumed to be the owner of the copyright in the work when the work is first published.

### **Presumptions where author is dead**

**168.**—(1) This section applies if it is proved that the author of an authorial work is dead.

(2) The work is presumed to be original.

5 (3) If the claimant alleges that a specified publication is the first publication of the work and that the first publication took place in a specified country and on a specified date —

(a) the specified publication is presumed to be the first publication of the work; and

10 (b) the first publication of the work is presumed to have taken place in the specified country and on the specified date.

### **Presumptions as to anonymous or pseudonymous literary, dramatic, musical or artistic work**

**169.**—(1) This section applies if —

15 (a) an authorial work is published;

(b) the publication is anonymous or is alleged by the claimant to be pseudonymous; and

(c) it is not proved that the work has an identified author.

(2) The work is presumed to be original.

20 (3) If the claimant alleges that a specified publication is the first publication of the work and that the first publication took place in a specified country and on a specified date —

(a) the specified publication is presumed to be the first publication of the work; and

25 (b) the first publication of the work is presumed to have taken place in the specified country and on the specified date.

### **Presumptions relating to label or mark on copy of sound recording**

**170.**—(1) This section applies if —

30 (a) copies of a sound recording are supplied to the public; and

- (b) those copies bear a label or other mark stating that —
  - (i) a specified person owns the copyright in the recording;
  - (ii) the recording is first published in a specified year; or
  - (iii) the recording is first published in a specified country. 5
- (2) It is respectively presumed that —
  - (a) the specified person owns the copyright in the recording;
  - (b) the recording is first published in the specified year; and
  - (c) the recording is first published in the specified country.

### **Presumptions as to maker of film**

10

- 171.**—(1) This section applies if —
- (a) copies of a film are made available to the public;
  - (b) the name of a person appears on those copies in a way that implies that the person made the film; and
  - (c) in the case of an individual — the name is — 15
    - (i) the person’s true name; or
    - (ii) the name by which the person is commonly known.
- (2) The person is presumed —
- (a) to have made the film; and
  - (b) to have made the film in circumstances to which 20
    - section 135 (works made under commission) does not apply.

## **PART 4**

### **PROTECTION OF PERFORMANCES**

#### **Interpretation of this Part**

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**172.** In this Part —

“direct”, in relation to recording a performance, means recording the live performance;

“indirect”, in relation to recording a performance, means recording from a communication of the performance.

### **Protection of performances**

**173.** A performance is protected if it is —

- 5 (a) a qualifying performance; and
- (b) given live —
  - (i) in Singapore; or
  - (ii) by a qualified individual.

### **Duration of protection**

10 **174.** A performance is protected for the period —

- (a) starting on the day the performance is given; and
- (b) ending 70 years after the end of the year in which the performance is given.

### **Infringing use — general**

15 **175.** Subject to Part 5 (permitted uses), a person makes an infringing use of a protected performance if —

- (a) the person does any of the following acts:
  - (i) while the performance is live —
    - 20 (A) directly or indirectly records the performance in any manner or medium;
    - (B) communicates the performance to the public; or
    - (C) causes the performance to be seen or heard (or both) in public;
  - 25 (ii) makes a copy of a recording of the performance;
  - (iii) publishes a recording of the performance, but only if no recording of the performance has been published;
  - (iv) makes a recording of the performance available to the public (on a network or otherwise) in a way that

the recording may be accessed by any person on demand; and

(b) the act is done —

- (i) when the performance is protected;
- (ii) in Singapore; and
- (iii) without the rights owner's authority.

5

**Infringing use — commercial dealing in unauthorised recordings, etc.**

**176.** Subject to Part 5 (permitted uses), a person makes an infringing use of a protected performance if —

10

(a) the person does any of the following acts:

- (i) deals commercially in a recording of the performance;
- (ii) imports a recording of the performance for the purpose of commercially dealing;

15

(b) the act is done —

- (i) when the performance is protected;
- (ii) in Singapore; and
- (iii) without the rights owner's authority; and

(c) the person knows or ought reasonably to know that the recording —

20

- (i) is made without the rights owner's authority; and
- (ii) either —

(A) is made on or after the appointed day in circumstances that constitute an infringing use of the performance under section 175; or

25

(B) was made before the appointed day in circumstances that constitute an unauthorised use of the performance under the 1987 Act.

### **Action for infringing use of protected performance**

177. A performer of a protected performance may bring an action in the Court against any person who makes an infringing use of the performance.

#### 5 **Limitation of action**

178. An action under section 177 for an infringing use of a performance may not be brought more than 6 years after the infringing use takes place.

### **Remedies and border enforcement measures**

10 179. Part 6 applies.

#### **Assignment of right to bring action**

180.—(1) The right to bring an action under section 177 may be assigned.

15 (2) For the purposes of subsection (1), an assignment is valid only if it is —

(a) made in writing; and

(b) signed by or on behalf of the assignor.

(3) Subsection (2)(b) does not apply to an assignment made before the appointed day.

#### 20 **Presumptions relating to identity of performers**

181.—(1) This section applies to an action under section 177.

(2) Unless the contrary is proved, a person is presumed to be the performer of a performance if —

25 (a) the person's true name, or a name by which the person is commonly known, appears on a recording of the performance in a way that implies that the person gave the performance; and

(b) the recording is made available to the public.

30 (3) Unless the contrary is proved, a group of persons is presumed to have performed in a performance if —



- (a) the group's true name, or a name by which the group is commonly known, appears on a recording of the performance in a way that implies that the group gave the performance; and
- (b) the recording is made available to the public. 5

### **Other rights not affected**

**182.** This Part does not affect —

- (a) any copyright in a work that is performed;
- (b) any copyright in a sound recording, film or broadcast of a performance; and 10
- (c) any other right or obligation arising otherwise than under this Part.

## PART 5

### PERMITTED USES OF COPYRIGHT WORKS AND PROTECTED PERFORMANCES 15

#### *Division 1 — General provisions*

### **Permitted uses are not rights infringements**

**183.**—(1) Where an act in relation to a work is a permitted use, the act is not an infringement of any copyright in the work. 20

(2) Where an act in relation to a protected performance is a permitted use, the act is not an infringing use of the performance.

### **Permitted uses are independent**

**184.** Unless this Act expressly provides otherwise, a permitted use is independent of, and does not affect the application of, any other permitted use. 25

## Permitted uses may go beyond scope of copyright or protection of performances

185. An act that is a permitted use —

(a) is not necessarily comprised in a copyright; and

5 (b) would not necessarily constitute an infringing use of a protected performance if the act were not a permitted use.

*Explanation.* — To provide certainty, some provisions on permitted uses are drafted in a way that goes beyond the acts comprised in a copyright and what would otherwise be an infringing use of a protected performance.

## 10 Permitted uses may be excluded or restricted by reasonable contract term

186.—(1) Subject to this section and section 187, a rights owner may, by contract with a person, exclude or restrict the application of a permitted use to that person.

15 (2) A contract term between the rights owner and another person (called in this section the counterparty) is valid for the purposes of subsection (1) only if —

(a) the contract is individually negotiated; and

20 (b) the term is fair and reasonable, having regard to the circumstances that are, or ought reasonably to be, known to or in the contemplation of the parties when the contract is made.

(3) For the purposes of subsection (2)(b), relevant matters in deciding whether a term of a contract is fair and reasonable include —

25 (a) the strength of the bargaining positions of the parties relative to each other, taking into account (among other things) alternative means by which the counterparty's requirements could have been met;

30 (b) whether the counterparty received an inducement to agree to the term, or in accepting it had an opportunity of entering into a similar contract with other persons, but without having to accept a similar term;

- (c) whether the counterparty knows or ought reasonably to know of the existence and extent of the term (having regard, among other things, to any custom of the trade and any previous course of dealing between the parties); and
- (d) whether at the time of the contract it is reasonable to expect that the contract is workable without the term. 5

(4) Subject to any contrary intention in the contract, where a contract term between a rights owner and a person excludes or restricts the application of a permitted use to that person, the benefit of that term passes to the rights owner's successors in title. 10

(5) This section applies to any contract made before, on or after the appointed day.

### **Permitted uses that may not be excluded or restricted**

**187.**—(1) Any contract term is void to the extent that it purports, directly or indirectly, to exclude or restrict any permitted use under any provision in — 15

- (a) Division 6 (public collections), but not section 234 (supplying copies of published literary, dramatic or musical works or articles between libraries and archives);
- (b) Division 7 (computer programs); 20
- (c) Division 8 (computational data analysis); or
- (d) Division 17 (judicial proceedings and legal advice).

(2) Without limiting subsection (1), a contract term is void to the extent that it purports, directly or indirectly, to prevent or restrict the doing of any of the following acts in circumstances that constitute a permitted use under the provisions mentioned in subsection (1): 25

- (a) making a copy of a work or a recording of a protected performance;
- (b) supplying (whether by communication or otherwise) a copy of a work or a recording of a performance; 30
- (c) performing a work or a recording of a protected performance.

(3) This section applies to any contract made before, on or after the appointed day.

### **Evasion through choice of law clause to be void**

5 **188.**—(1) A contract term that purports to apply the law of a country other than Singapore is void if —

(a) the application of that law has the effect of excluding or restricting the operation of any permitted use; and

(b) either —

10 (i) the term is imposed wholly or mainly for the purpose of evading the operation of any permitted use; or

(ii) in the making of the contract one of the parties dealt as consumer, and he or she was then a Singapore resident, and the essential steps for the making of the contract were taken in Singapore (whether by him or her or by others on his or her behalf).

(2) For the purposes of subsection (1)(b) —

(a) the interpretation of section 27(2)(b) of the Unfair Contract Terms Act must be considered; and

20 (b) if a person claims that a party does not deal as a consumer, the burden is on the person to prove this.

(3) This section applies to any contract made before, on or after the appointed day.

### **What is sufficient acknowledgment of an authorial work**

25 **189.**—(1) For the purposes of this Part, an acknowledgment of an authorial work is sufficient if the acknowledgment identifies —

(a) the work by its title or other description; and

(b) subject to subsection (2) — the author.

(2) It is not necessary to identify the author if —

(a) the work has no identified author; or

- (b) the author has previously agreed or directed that his or her name is not to be acknowledged.

*Division 2 — Fair use*

**Fair use is permitted use**

**190.**—(1) It is a permitted use of a work to make a fair use of the work. 5

(2) It is a permitted use of a protected performance to make a fair use of —

- (a) the performance; or  
(b) a recording of the performance. 10

**Relevant matters in deciding whether use is fair**

**191.** Subject to sections 192, 193 and 194, all relevant matters must be considered in deciding whether a work or a protected performance (including a recording of the performance) is fairly used, including —

- (a) the purpose and character of the use, including whether the use is of a commercial nature or is for non-profit educational purposes; 15  
(b) the nature of the work or performance;  
(c) the amount and substantiality of the portion used in relation to the whole work or performance; and 20  
(d) the effect of the use upon the potential market for, or value of, the work or performance.

**Additional requirement for sufficient acknowledgment where use is for certain purposes**

**192.**—(1) Where a work or a protected performance (including a recording of the performance) is used for the purpose of reporting news, the use is not fair unless — 25

- (a) the work or performance is sufficiently acknowledged; or  
(b) sufficient acknowledgment is impossible for reasons of practicality or otherwise. 30

(2) Where a work or protected performance (or a recording of the performance) is used for the purpose of criticism or review (whether of that work or performance or another work or performance), the use is not fair unless the work or performance is sufficiently acknowledged.

**Deemed fair use where work or recording included in fairly-used work**

**193.**—(1) This section applies where —

(a) any of the following works is used for the purpose of criticism or review:

- (i) a sound recording;
- (ii) a film;
- (iii) a broadcast;
- (iv) a cable programme; and

(b) the use is fair.

(2) A work or a recording of a protected performance that is included in the work mentioned in subsection (1)(a) is deemed to be fairly used (and section 191 does not apply).

(3) To avoid doubt, this section does not limit what would otherwise be a fair use.

**Deemed fair use where reasonable portion of article copied for research or study**

**194.**—(1) Making a copy of a literary, dramatic or musical work for the purpose of research or study is deemed to be a fair use (and section 191 does not apply) if —

- (a) the work is an article in a periodical publication; or
- (b) no more than a reasonable portion of the work is copied.

(2) Subsection (1) does not apply to making a copy of an article in a periodical publication if —

- (a) another article in that publication is also copied; and

(b) the copied articles deal with different subject matters.

(3) To avoid doubt, this section does not limit what would otherwise be a fair use.

*Division 3 — Education and educational institutions*

**Interpretation: when is a copy or recording made or used for the educational purposes of an educational institution**

5

**195.**—(1) For the purposes of this Division, a copy of a work or a recording of a protected performance is taken to be made or used for the educational purposes of an educational institution if —

(a) the copy or recording is made for use, or is used, in connection with a course of education provided by the institution; or

10

(b) the copy or recording is made for inclusion, or is included, in the collection of a library of the institution.

(2) Subsection (1) does not limit the meaning of “educational purposes” in this Act.

15

**Copying authorial work by non-reprographic means for course of education**

**196.**—(1) If the conditions in subsection (2) are met, it is a permitted use to make a copy of an authorial work.

20

(2) The conditions are —

(a) the copy is made for the purposes of a course of education;

(b) the copy is made by a person conducting or undergoing the course; and

(c) the copy is not made by a reprographic process.

25

(3) In this section, “reprographic process” —

(a) means a process —

(i) for making facsimile copies (whether of the same scale or not); or

(ii) involving the use of an appliance for making multiple copies; and

(b) includes, in relation to an authorial work in electronic form, any copying by electronic means, but does not include the making of a film or sound recording.

**Copying or communicating very small portions of literary or dramatic work for course of education provided by educational institutions**

197.—(1) If the conditions in subsection (2) are met, it is a permitted use of a literary or dramatic work for a person (*X*) to —

(a) make a copy of a part (but not the whole) of the work in an edition of the work; or

(b) communicate a part (but not the whole) of the work in an edition of the work.

(2) The conditions are —

(a) the copy or communication is made for the purposes of a course of education provided by an educational institution;

(b) either —

(i) the copy or communication is made on or from the institution's premises; or

(ii) the copy (being an electronic copy) or communication is made on a network operated or controlled by the institution;

(c) the part of the work that is copied or communicated does not exceed —

(i) if the edition has 500 pages or less — 5 pages;

(ii) if the edition has more than 500 pages — 5% of the total number of pages in the edition;

(iii) if the edition is an electronic edition and is not divided into pages —

(A) 5% of the total number of bytes in the edition; and



(B) 5% of the total number of words in the edition or, where it is not practicable to use the total number of words as a measure, 5% of the contents of the edition; and

(d) in the 14 days before the day on which the work is copied or communicated, *X* does not (whether on *X*'s own behalf or on behalf of another person) — 5

(i) copy or communicate any part of the work; or

(ii) cause any part of the work to be copied or communicated. 10

(3) In this section, a reference to a literary or dramatic work includes a reference to an explanatory or illustrative artistic work accompanying the literary or dramatic work.

**Copying or communicating material for educational purposes of educational institutions** 15

**198.**—(1) If the conditions in subsection (2) are met and subject to section 199, it is a permitted use to —

(a) make a copy of any of the following material:

(i) an authorial work;

(ii) a recording of a protected performance; or 20

(b) communicate the material.

(2) The conditions are —

(a) the copy or communication is made by or on behalf of the body (*X*) administering an educational institution for the educational purposes of any educational institution; 25

(b) in the case of an article in a periodical publication —

(i) the copy or communication does not include 2 or more articles contained in the same periodical publication; or

(ii) the copied or communicated articles relate to the same subject matter; 30

(c) in the case of any other material that has been separately published —

(i) not more than a reasonable portion of the material is copied or communicated; or

(ii) before the material is copied or communicated, *X* (or a person acting on behalf of *X*) —

(A) makes a reasonable investigation; and

(B) is satisfied that there is no new copy of the material that could be obtained within a reasonable time at an ordinary commercial price;

(d) in the case of subsection (1)(a) — the copy is notated according to section 301; and

(e) as soon as practicable after the copy or communication is made, the prescribed record is made by or on behalf of *X*.

(3) The record mentioned in subsection (2)(e) may, if the copy or communication is exempt, state so.

(4) *X* must pay equitable remuneration to the rights owner if —

(a) the owner makes a written request within the prescribed time after the copy or communication is made; and

(b) the copy or communication is —

(i) not exempt; or

(ii) not stated as exempt in the record made under subsection (2)(e).

(5) The amount of equitable remuneration is to be —

(a) agreed between *X* and the rights owner; or

(b) in default of agreement, decided by a Copyright Tribunal.

(6) For the purposes of this section —

(a) without limiting section 195, a copy or communication is taken to be made for the educational purposes of any educational institution if it is made in an electronic form on

a network operated or controlled by the institution for the purpose of being accessed by persons undertaking a course of education provided by the institution or another educational institution; and

- (b) a copy or communication made for the educational purposes of an educational institution is exempt if — 5
- (i) the copy is made for distribution, or the communication is made, to persons undertaking a correspondence course or an external study course provided by the institution; 10
  - (ii) the copy is not distributed, or the communication is not made, as part of the lecture notes prepared for the course;
  - (iii) in the case of an authorial work other than an article in a periodical publication — only a reasonable portion of the work is copied or communicated; and 15
  - (iv) in the case of a recording of a protected performance — only a reasonable portion of the recording is copied or communicated.

(7) This section does not affect the right of the rights owner of an authorial work to grant a licence to, or the right of the rights owner of a protected performance to authorise, the body administering an educational institution — 20

- (a) to make, or cause to be made, copies of the work or recordings of the performance; or 25
- (b) to communicate, or cause to be communicated, the work or performance.

(8) For the purposes of this section, an article in a periodical publication or a literary, dramatic or musical work is taken to include an explanatory or illustrative artistic work accompanying the article or the literary, dramatic or musical work. 30

### **Suspension of section 198 for contravention of record-keeping requirements**

5 **199.**—(1) Subject to this section, a Copyright Tribunal may make an order suspending the application of the whole of section 198 in relation to a body administering an educational institution.

(2) A suspension order may only be made on an application by the Attorney-General.

(3) A suspension order against a body administering an educational institution may only be made if —

10 (a) the body has been convicted of 2 or more record-keeping offences;

(b) the administrator of the institution has been convicted of 2 or more record-keeping offences; or

15 (c) the body and the administrator of the institution has each been convicted of one record-keeping offence and the offences arise from separate transactions.

20 (4) A suspension order may not be made against a body administering an educational institution if the Tribunal is satisfied that the body has taken all reasonable steps to ensure that no further record-keeping offences will be committed in relation to copies made by or on behalf of the body.

(5) The Tribunal may revoke a suspension order against a body administering an educational institution —

(a) on the application of the body; and

25 (b) if the Tribunal is satisfied that the body has taken all reasonable steps to ensure that no further record-keeping offences will be committed in relation to copies made by or on behalf of the body.

(6) In this section —

30 “administrator”, in relation to an educational institution, means the person who is responsible for the day-to-day administration of the institution;

“record-keeping offence” means —

- (a) any prescribed offence relating to the keeping of records for the purposes of section 198(2)(e); or
- (b) any offence mentioned in section 166(1) of the 1987 Act;

5

“suspension order” means an order under subsection (1).

### **Copying broadcasts or cable programmes for educational purposes**

**200.**—(1) If the conditions in subsection (2) are met, it is a permitted use to make a copy of a broadcast or cable programme.

10

(2) The conditions are —

- (a) the copy is made by or on behalf of the body administering an educational institution; and
- (b) the copy is not used except for the purposes of a course of education at that institution.

15

(3) A permitted use of a broadcast or cable programme under this section is also a permitted use of a work or protected performance included in the broadcast or programme.

### **Copying for purposes of teaching or learning film making**

**201.**—(1) If the conditions in subsection (2) are met, it is a permitted use for a person (*X*) to do the following acts:

20

- (a) make a copy of —
  - (i) a sound recording;
  - (ii) a film;
  - (iii) a broadcast;
  - (iv) a cable programme;
  - (v) a recording of a protected performance;
- (b) record a protected performance live.

25

(2) The conditions are —

- (a) *X* is teaching, or learning from, another person how to make a film or a sound-track of a film;
- (b) for that purpose, *X* makes a film or a sound-track of a film; and
- (c) the act is done in the course of making that film or sound-track.

### **Things done for purposes of examination**

**202.** It is a permitted use of a work or protected performance to do anything for the purposes of an examination, including —

- (a) setting the questions;
- (b) communicating the questions to the candidates; and
- (c) answering the questions.

### **Inclusion of authorial work in collections for use by educational institutions**

**203.—**(1) If the conditions in subsection (2) are met, it is a permitted use to include a short extract of an authorial work in a collection of authorial works.

(2) The conditions are —

- (a) the work has been published;
- (b) the work was not published for the purpose of being used by educational institutions;
- (c) the collection is contained in a book, sound recording or film;
- (d) the collection is intended for use by educational institutions and this intention is described —
  - (i) in the book;
  - (ii) on the label or container of each copy of the recording; or
  - (iii) in the film;

- (e) the work is sufficiently acknowledged; and
  - (f) the collection and any similar recent collection do not contain, in total, more than one other extract from —
    - (i) any other authorial work (being a copyright work) by the same author; or 5
    - (ii) any adaptation of a literary, dramatic or musical work (being a copyright work) by the same author.
- (3) For the purposes of this section —
- (a) 2 authorial works (including adaptations) are taken to have the same author if the same person is — 10
    - (i) the author or an author of both works; or
    - (ii) the author of one work and an author of the other work; and
  - (b) “similar recent collection” means a collection that is —
    - (i) published by the same publisher that published the collection mentioned in subsection (1); 15
    - (ii) published in the 5 years immediately before the publication of the collection mentioned in subsection (1);
    - (iii) intended for use by educational institutions; and 20
    - (iv) otherwise similar to the collection mentioned in subsection (1).

### **Using material available on Internet for educational purposes**

**204.**—(1) If the conditions in subsection (2) are met, the following acts are permitted uses: 25

- (a) making a copy of a work or a recording of a protected performance;
- (b) communicating a work or a recording of a protected performance to the public;
- (c) making an adaptation of a literary, dramatic or musical work; 30

(d) recording a protected performance live.

(2) The conditions are —

(a) the work, recording or performance was accessed by the person (*X*) using the Internet;

5 (b) when *X* accessed the work, recording or performance, it was generally accessible by the public free of charge using the Internet;

*Illustrations*

10 (a) A work, recording or performance is not generally accessible to the public if it is accessible only for a limited period that cannot be renewed or extended (for example, under a one-time trial subscription).

15 (b) A work, recording or performance is not generally accessible to the public if it is accessible only by circumventing an access control measure in circumstances that constitute an infringement of Division 4 of Part 7 (protection of technological measures).

(c) A work, recording or performance is not accessible free of charge if it is only accessible under a paid subscription, even if not all users of the subscription paid for it.

20 (c) either —

(i) *X* is a public officer or an officer of a public body, and the act is done for the purpose of developing or implementing a curriculum for an educational institution; or

25 (ii) *X* is a student of or a member of the staff of an educational institution, and the act is done for the educational purposes of that institution;

(d) *X* cites (or causes to be cited) the Internet source from which the work, recording or performance was accessed and the date on which the source was accessed;

30 (e) *X* gives (or causes to be given) a sufficient acknowledgment of the work, recording or performance, if and to the extent that the necessary information is available from the Internet source;



(f) in the case of subsection (1)(b) — the communication is done on —

(i) a network —

(A) that is operated or controlled by an educational institution; and

5

(B) to which access is limited to the students or staff of that institution; or

(ii) a prescribed platform; and

(g) if the work, recording or performance has been made available on the Internet in circumstances that constitute a rights infringement —

10

(i) *X* does not know and is not notified of this fact when *X* does the acts mentioned in subsection (1); and

(ii) if *X* is subsequently notified of this fact —

(A) *X* stops doing any of the acts mentioned in subsection (1); and

15

(B) insofar as the work or recording has been communicated to the public, *X* takes reasonable steps to prevent the public from further accessing the work, recording or performance.

20

(3) Without limiting the expression “educational purposes” elsewhere in this Act, for the purposes of this section, the following are taken to be acts done for educational purposes:

(a) collaborative research;

25

(b) acts done for the purposes of teaching or study;

(c) organising or participating in an exhibition or a competition (whether within an educational institution or at the national or international level).

**Performances by students or staff of educational institutions, etc.**

**205.**—(1) If the conditions in subsection (2) are met, it is a permitted use to perform a musical work in public.

5 (2) The conditions are —

(a) the work is performed for an audience by the students or staff of an educational institution (whether on the premises of the institution or elsewhere); and

10 (b) the performance is in the course of the institution's activities.

(3) If the conditions in subsection (4) are met, it is a permitted use to perform a literary or dramatic work in public.

(4) The conditions are —

15 (a) the work is performed for an audience by the students or staff of an educational institution (whether on the premises of the institution or elsewhere);

(b) the audience is limited to —

(i) persons who teach or study at the institution; and

(ii) persons directly connected with the institution; and

20 (c) the performance is in the course of the institution's activities.

(5) If the conditions in subsection (6) are met, it is a permitted use to —

25 (a) cause the visual images or sounds that are part of any of the following works to be seen or heard in public (or both):

(i) a sound recording;

(ii) a film;

(iii) a television broadcast;

(iv) a cable programme; or

30 (b) cause a protected performance to be seen or heard (or both) live in public.

(6) The conditions are —

(a) the images or sounds are caused, by the students or staff of an educational institution, to be seen or heard by an audience (whether on the premises of the institution or elsewhere);

5

(b) the audience is limited to —

(i) persons who teach or study at the institution; and

(ii) persons directly connected with the institution; and

(c) the images are caused to be seen, or the sounds are caused to be heard, in the course of the institution's activities.

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(7) For the purposes of this section —

(a) a person is directly connected with an educational institution if he or she is a parent, a guardian, or a sibling of a student of the institution; and

(b) the staff of an educational institution includes —

15

(i) any adjunct staff of the institution; and

(ii) any person engaged by the institution to conduct any course of instruction, activity or programme of or offered by the institution.

*Division 4 — Persons with print disabilities*

20

**Material to which this Division applies**

**206.** In this Division, “relevant material” —

(a) means any of the following material:

(i) a published literary work;

(ii) a published dramatic work;

25

(iii) a published artistic work;

(iv) a published sound recording;

(v) a sound broadcast;

(vi) a published recording of a protected performance;  
but

(b) does not include a sound recording, a sound broadcast or a recording of a protected performance that comprises only one or more of the following:

- (i) the performance of a musical work;
- (ii) a musical work in which words are sung;
- (iii) a musical work in which words are spoken incidentally to or in association with the music.

10 **Interpretation: what is an accessible format**

**207.**—(1) A format is an “accessible format” if it is —

(a) any format that is accessible to persons with print disabilities, including —

- (i) a large print version;
- (ii) an electronic book;
- (iii) a sound recording; and
- (iv) the format known as Digital Accessible Information System (DAISY); or

(b) any format that is specifically designed to meet the needs of persons with print disabilities, including —

- (i) a Braille version; and
- (ii) a photographic version.

(2) For the purposes of subsection (1)(b)(ii), a thing is in photographic version if it is produced as a film-strip, or a series of separate transparencies, designed to meet the needs of persons with print disabilities.

**Interpretation: what is an accessible format copy**

**208.** An “accessible format copy” means —

- (a) in relation to an authorial work — a copy (whether in an electronic or a physical form) of the work in an accessible format; 5
- (b) in relation to a sound recording — a copy (whether in an electronic or a physical form) of the recording in an accessible format;
- (c) in relation to a sound broadcast — a copy of the broadcast in an accessible format; and 10
- (d) in relation to a recording of a protected performance — a copy (whether in an electronic or a physical form) of the recording in an accessible format.

**Interpretation: what is a new copy of an accessible format copy**

**209.** In this Division, an accessible format copy is new if — 15

- (a) in the case of a physical copy — the copy is not secondhand;
- (b) in the case of a copy (being a sound recording or an electronic copy) that is embodied or stored in a record or other article — a copy that is embodied or stored in a record or other article that is not secondhand; or 20
- (c) in the case of a copy (being a sound recording or an electronic copy) that is not embodied or stored in a record or other article — a copy that is fit for use.

**Interpretation: what does it mean to make an accessible format copy available to persons with print disabilities or a foreign institution** 25

**210.** For the purposes of this Division —

- (a) an accessible format copy is made available to a person with a print disability if the copy is made available — 30
  - (i) to the person;

- (ii) on a network or otherwise; and
  - (iii) in a way that the copy may be accessed by the person on demand; and
- (b) an accessible format copy is made available to a foreign institution aiding persons with print disabilities if the copy is made available —
- (i) to a person (*X*) responsible for the day-to-day administration of the institution, or a person (*Y*) authorised by *X*;
  - (ii) on a network or otherwise; and
  - (iii) in a way that the copy may be accessed by *X* or *Y* on demand.

**Making, distributing or making available accessible format copies for Singapore residents with print disabilities**

- 211.—(1) If the conditions in subsection (2) are met, it is a permitted use of any relevant material to —
- (a) make a copy of the material;
  - (b) distribute a physical copy of the material; or
  - (c) make available an electronic copy of the material.
- (2) The conditions are —
- (a) the copy is an accessible format copy;
  - (b) the copy is made, distributed or made available by or on behalf of —
    - (i) the body (*B*) administering an institution aiding persons with print disabilities; or
    - (ii) an educational institution (*E*);
  - (c) before the copy is made, distributed or made available, *B* or *E* (or a person acting on behalf of *B* or *E*) —
    - (i) makes a reasonable investigation; and

(ii) is satisfied that there is no new copy of the material that —

(A) has been separately published;

(B) is in the same accessible format as the copy;  
and

(C) could be obtained within a reasonable time at an ordinary commercial price;

(d) the copy is not made, distributed or made available for profit;

(e) the copy is made for, or distributed or made available to, a person with a print disability (*X*);

(f) the copy is to be used by *X* for the purposes of research or study or for self-instruction in any matter;

(g) *X* is a Singapore resident;

(h) if the copy is made, distributed or made available by or on behalf of *E* — *X* is a student of *E*;

(i) as soon as practicable after the copy is made, distributed or made available, the prescribed record is made by or on behalf of *B* or *E*;

(j) in the case of subsection (1)(a) — the copy is notated according to section 301; and

(k) any other condition that may be prescribed.

(3) To avoid doubt, it does not matter whether the physical copy mentioned in subsection (1)(b) or the electronic copy mentioned in subsection (1)(c) is made before, on or after the appointed day.

**Making or making available accessible format copies for foreign institutions or non-resident persons with print disabilities**

**212.**—(1) If the conditions in subsection (2) are met, it is a permitted use of any relevant material to —

(a) make a physical copy of the material; or

(b) make available an electronic copy of the material.

(2) The conditions are —

(a) the copy is an accessible format copy;

(b) the copy is made or made available by or on behalf of —

5 (i) the body (*B*) administering an institution aiding persons with print disabilities; or

(ii) an educational institution (*E*);

(c) the copy is made for or made available to —

10 (i) a foreign institution aiding persons with print disabilities (*F*); or

(ii) a person with a print disability (*X*) who is not a Singapore resident;

(d) the copy is not made or made available for profit;

(e) in the case of subsection (1)(a) —

15 (i) the copy is made for export; and

(ii) the copy is notated according to section 301;

(f) as soon as practicable after the copy is made or made available, the prescribed record is made by or on behalf of *B* or *E*;

20 (g) *B* or *E* (or a person acting on behalf of *B* or *E*) complies with any prescribed requirements for checking the identity and other particulars of *F* or *X*; and

(h) any other condition that may be prescribed.

25 (3) To avoid doubt, it does not matter whether the electronic copy mentioned in subsection (1)(b) is made before, on or after the appointed day.

### **Receiving, importing or distributing accessible format copies from foreign institutions**

30 **213.**—(1) If the conditions in subsection (2) are met, it is a permitted use of any relevant material to —



- (a) make a temporary electronic copy of the material incidentally to the technical process of receiving an electronic copy of the material from a foreign institution (*F*) aiding persons with print disabilities;
  - (b) import a physical copy of the material that originated from *F*; or 5
  - (c) distribute a physical copy of the material that originated from *F* to a Singapore resident, being a person with a print disability, on a non-profit basis.
- (2) The conditions are — 10
- (a) the copy is an accessible format copy;
  - (b) the copy is made, imported or distributed by or on behalf of —
    - (i) the body (*B*) administering an institution aiding persons with print disabilities; or 15
    - (ii) an educational institution (*E*);
  - (c) the copy is requested by *B* or *E* from *F*;
  - (d) the copy is requested —
    - (i) for a person with a print disability to use the copy for personal research or study or for self-instruction in any matter; or 20
    - (ii) for the purpose of distributing the copy on a non-profit basis —
      - (A) in the case of *B* — to a person with a print disability, so that the person can use the copy for the purposes of research or study or for self-instruction in any matter; or 25
      - (B) in the case of *E* — to a student of *E* (being a person with a print disability), so that the student can use the copy for the purposes of research or study or for self-instruction in any matter; 30

(*e*) before the copy is made, imported or distributed, *B* or *E* (or a person acting on behalf of *B* or *E*) —

(i) makes a reasonable investigation; and

(ii) is satisfied that there is no new copy of the material that —

(A) has been separately published;

(B) is in the same accessible format as the copy; and

(C) could be obtained within a reasonable time at an ordinary commercial price;

(*f*) as soon as practicable after the copy is received, the prescribed record is made by or on behalf of *B* or *E*; and

(*g*) any other condition that may be prescribed.

(3) To avoid doubt, it does not matter whether the physical copy mentioned in subsection (1)(*b*) and (*c*) is made before, on or after the appointed day.

### **Making of accessible format copy by person with print disability for personal use**

**214.**—(1) If the conditions in subsection (2) are met, it is a permitted use to make a copy of any relevant material.

(2) The conditions are —

(*a*) the copy is an accessible format copy;

(*b*) the copy is made by —

(i) a person with a print disability (*X*) who is a Singapore resident; or

(ii) a person acting on *X*'s behalf, but not —

(A) the body administering an institution aiding persons with print disabilities; or

(B) an educational institution of which *X* is a student;

- (c) the copy is to be used by *X* for the purposes of research or study or for self-instruction in any matter;
- (d) before making the copy, *X* or the person acting on *X*'s behalf —
  - (i) makes a reasonable investigation; and 5
  - (ii) is satisfied that there is no new copy of the material that —
    - (A) has been separately published;
    - (B) is in the same accessible format as the copy; and 10
    - (C) could be obtained within a reasonable time at an ordinary commercial price; and
- (e) any other condition that may be prescribed is met.

**Copyright not to vest by virtue of making accessible format copy for persons with print disability** 15

**215.**—(1) This section applies where an accessible format copy of any relevant material is made —

- (a) by or on behalf of —
  - (i) the body administering an institution aiding persons with print disabilities; or 20
  - (ii) an educational institution;
- (b) on a non-profit basis; and
- (c) to be used by a person with a print disability for the purposes of research or study or for self-instruction in any matter. 25

(2) Despite any other provision of this Act, copyright does not vest in the person who made the copy just because the person made the copy under the provisions of this Division.

### **Rights owner's right to license or authorise not affected**

**216.** This Division does not affect a rights owner's right to grant a licence to or authorise (as the case may be) the body administering an institution aiding persons with print disabilities or an educational institution —

- (a) to make or cause to be made;
  - (b) to make available or cause to be made available; or
  - (c) to distribute or cause to be distributed,
- accessible format copies of any relevant material.

#### *Division 5 — Persons with intellectual disabilities*

### **Copying by institution aiding persons with intellectual disabilities — authorial works**

**217.—(1)** If the conditions in subsection (2) are met, it is a permitted use to make a copy of an authorial work.

(2) The conditions are —

- (a) the work has been published;
- (b) the copy is made by or on behalf of a body (*X*) administering an institution aiding persons with intellectual disabilities;
- (c) the copy is made for the sole purpose of aiding persons with intellectual disabilities (whether the aid is provided by the institution or not);
- (d) before the copy is made, *X* (or a person acting on behalf of *X*) —
  - (i) makes a reasonable investigation; and
  - (ii) is satisfied that there is no new copy of the work that —
    - (A) has been separately published;
    - (B) is in a form that is suitable for aiding persons with intellectual disabilities; and

(C) could be obtained within a reasonable time at an ordinary commercial price;

(e) the copy is notated according to section 301; and

(f) as soon as practicable after the copy is made, the prescribed record is made by or on behalf of *X*. 5

(3) *X* must pay equitable remuneration to the copyright owner if the latter makes a written request within the prescribed time after the copy is made.

(4) The amount of equitable remuneration is to be —

(a) agreed between *X* and the copyright owner; or 10

(b) in default of agreement, decided by a Copyright Tribunal.

(5) In this section, “new copy” means a copy that is not secondhand.

### **Copying, etc., by institution aiding persons with intellectual disability — protected performances**

**218.**—(1) If the conditions in subsection (2) are met, it is a permitted use to — 15

(a) make a copy of a recording of a protected performance; or

(b) record a protected performance live.

(2) The conditions are —

(a) the copy or recording is made by or on behalf of a body administering an institution aiding persons with intellectual disabilities; and 20

(b) the copy or recording is made for the sole purpose of aiding persons with intellectual disabilities (whether the aid is provided by the institution or not). 25

### **Copyright not to vest by virtue of making copy for aiding persons with intellectual disabilities**

**219.**—(1) This section applies where a copy of an authorial work is made —

- (a) by or on behalf of a body administering an institution aiding persons with intellectual disabilities; and
- (b) for the sole purpose of aiding persons with intellectual disabilities (whether the aid is provided by the institution or not).

(2) Despite any other provision of this Act, copyright does not vest in the person who made the copy just because the person made that copy under the provisions of this Division.

### **Rights owner’s right to license or authorise not affected**

**220.** This Division does not affect —

- (a) the right of the owner of the copyright in an authorial work to grant a licence to the body administering an institution aiding persons with print disabilities to make, or cause to be made, copies of the work; or
- (b) the right of the rights owner of a protected performance to authorise the body administering an institution aiding persons with print disabilities to —
  - (i) record, or cause to be recorded, the protected performance live; or
  - (ii) make, or cause to be made, copies of recordings of the protected performance.

### *Division 6 — Public collections: galleries, libraries, archives and museums*

#### **Interpretation: what is an article in a periodical publication**

**221.** In this Division, “article”, in relation to a periodical publication, means anything (other than an artistic work) appearing in the publication.

#### **Public use and enjoyment — copying for public exhibition**

**222.—**(1) If the conditions in subsection (2) are met, it is a permitted use to make a copy of any of the following material:

- (a) an authorial work;

- (b) a sound recording;
  - (c) a film;
  - (d) a recording of a protected performance.
- (2) The conditions are —
- (a) the material is part of a public collection; 5
  - (b) the copy is made by or on behalf of the custodian of the public collection;
  - (c) the copy is made for the purpose of an exhibition of the material that is held —
    - (i) by or on behalf of the custodian of the public collection; and 10
    - (ii) at any premises that are open to the public (whether for a fee or otherwise);
  - (d) the copy is not used for any other purpose; and
  - (e) before the copy is made, an authorised officer of the public collection — 15
    - (i) makes a reasonable investigation; and
    - (ii) declares that he or she is satisfied that a new copy of the material could not be obtained within a reasonable time at an ordinary commercial price. 20

**Public use and enjoyment — publicising public exhibition**

**223.**—(1) If the conditions in subsection (2) are met, it is a permitted use to —

- (a) make a copy of any of the following material:
  - (i) an authorial work; 25
  - (ii) a sound recording;
  - (iii) a film;
  - (iv) a recording of a protected performance; or
- (b) communicate the material to the public.

(2) The conditions are —

- (a) the material is part of a public collection;
- (b) the copy or communication is made by or on behalf of the custodian of the public collection;
- 5 (c) the material is copied or communicated, and supplied to the public, for the purpose of publicising an exhibition of the material that is held —
  - (i) by or on behalf of the custodian of the public collection; and
  - 10 (ii) at any premises that are open to the public (whether for a fee or otherwise);
- (d) the copy is not used for any other purpose and is not sold as merchandise;
- (e) the copy is not a reasonable substitute for the material; and
- 15 (f) any fee charged for the copy (or any material that includes the copy) does not exceed the cost of making and supplying the copy (or any material that includes the copy) plus a reasonable contribution to the general expenses of the public collection.

20 (3) For the purposes of subsection (2)(e) —

- (a) relevant factors include the extent of copying and any difference in quality between the copy and the material that is copied; and
- 25 (b) a copy of the whole or substantially the whole of a film or recording is taken to be a reasonable substitute of the film or recording.

(4) For the purposes of this Act, the supply of copies of any material in circumstances to which this section applies —

- 30 (a) is not to be treated as publishing the material (or any work or recording included in the material); and
- (b) must be ignored in determining the duration of any copyright in the material (or the included work).



**Public use and enjoyment — performing for public exhibition**

**224.**—(1) If the conditions in subsection (2) are met, it is a permitted use to do any of the following acts:

- (a) perform a literary, dramatic or musical work in public;
- (b) cause the visual images of a film to be seen in public or any sounds of the film to be heard in public (or both). 5

(2) The conditions are —

- (a) the work or film is part of a public collection;
- (b) the act is authorised by the custodian of the public collection; 10
- (c) the act is for the purpose of an exhibition of the work or film that is held —
  - (i) by or on behalf of the custodian of the public collection; and
  - (ii) at any premises that are open to the public (whether for a fee or otherwise); and 15
- (d) the act is not the sole or main purpose of the exhibition.

**Public use and enjoyment — making collection available on network of public collection**

**225.**—(1) If the conditions in subsection (2) are met, it is a permitted use to make any of the following material available on a network: 20

- (a) an article in a periodical publication, if acquired in electronic form;
- (b) a published authorial work, if acquired in electronic form; 25
- (c) an unpublished artistic work that is —
  - (i) in electronic form; or
  - (ii) in 3 dimensions and represented in a visual image in electronic form;
- (d) a film; 30

- (e) a sound recording;
- (f) a recording of a protected performance;
- (g) without limiting paragraphs (d), (e) and (f), an authorial work, a film, a sound recording or a recording of a protected performance that is or is part of online material copied from a Singapore website —

- (i) by or on behalf of the National Library Board; and
- (ii) for the purpose of acquiring the material for the purposes of section 6(d) of the National Library Board Act.

(2) The conditions are —

- (a) the material is part of a public collection; and
- (b) the network on which the material is made available may only be accessed —

- (i) within any premises where any part of the public collection is held;
- (ii) with the authority of the custodian of the public collection; and
- (iii) in a way that users of the public collection cannot, by using any equipment supplied by or on behalf of the custodian of the public collection —

- (A) make an electronic copy of the material; or
- (B) communicate the material.

(3) For the purposes of this Act, making an unpublished artistic work available in circumstances to which this section applies —

- (a) is not to be treated as publishing the work (or any work or recording included in the material); and
- (b) must be ignored in determining the duration of any copyright in the work (or the included work).

(4) In this section, “online material” and “Singapore website” have the meanings given by section 2 of the National Library Board Act.

**Research or study — copying and communicating material for users of public collection**

**226.**—(1) If the conditions in subsection (2) are met, it is a permitted use to —

(a) make a copy of any of the following material: 5

- (i) an authorial work;
- (ii) a recording of a protected performance; or

(b) communicate the material.

(2) The conditions are —

(a) either — 10

(i) the material has been published and is part of a public collection (other than a for-profit library); or

(ii) in the case of an authorial work, the work —

(A) is an unpublished artistic work;

(B) is part of a public collection (other than a for-profit library); and 15

(C) is, has been or will be exhibited at an exhibition held by or on behalf of the custodian of the public collection at any premises that are open to the public (whether for a fee or otherwise); 20

(b) the copy or communication is made or caused to be made —

(i) by an authorised officer (*X*) of the public collection; and

(ii) on a written request by a person (*Y*) to an authorised officer of the public collection for a copy of the material to be supplied to *Y*; 25

(c) the request includes a signed declaration by *Y* stating that —

(i) *Y* requires the copy for research or study and will not use it for any other purpose; and 30

(ii) either —

(A) no authorised officer of the public collection had previously supplied *Y* with a copy of the material (or any part of the material) requested by *Y*; or

(B) an authorised officer of the public collection had previously supplied *Y* with a copy of the material (or any part of the material) requested by *Y*, but that copy has been lost, destroyed or damaged;

(d) either —

(i) the declaration does not contain any material information that is false; or

(ii) *X* does not know that the declaration contains material information that is false;

(e) if the request is for copies of the whole or parts of 2 or more articles in the same periodical publication — the articles relate to the same subject matter;

(f) if the request is for a copy of the whole of the material (other than an article in a periodical publication), or of a portion of the material that exceeds a reasonable portion — before the copy is made, an authorised officer of the public collection —

(i) makes a reasonable investigation; and

(ii) declares that he or she is satisfied that a new copy of the material could not be obtained within a reasonable time at an ordinary commercial price;

(g) if the request is for an electronic copy —

(i) before or when the electronic copy is communicated to *Y*, *Y* is given a notice stating —

(A) that the electronic copy is made under this section;

(B) that the work may be subject to copyright, or that the performance may be protected, under this Act; and

(C) any prescribed matter; and

(ii) as soon as practicable after the electronic copy is communicated to *Y*, the electronic copy made for the purpose of communication is destroyed; 5

(h) in the case of subsection (1)(a) — the copy is notated according to section 301;

(i) the copy is not supplied to any person other than *Y*; 10

(j) any fee for making and supplying the copy to *Y* does not exceed the cost of making and supplying the copy plus a reasonable contribution to the general expenses of the public collection; and

(k) no prescribed exception applies. 15

(3) For the purposes of this Act, the supply of copies of any material in circumstances to which this section applies —

(a) is not to be treated as publishing the material (or any work or recording included in the material); and

(b) must be ignored in determining the duration of any copyright in the material (or the included work). 20

**Research or study — copying originals for use on premises of public collection**

**227.**—(1) If the conditions in subsection (2) are met, it is a permitted use to — 25

(a) make a copy of any of the following material:

(i) an authorial work;

(ii) a sound recording;

(iii) a film;

(iv) a recording of a protected performance; or 30

(b) communicate the material.

(2) The conditions are —

- (a) a public collection has or used to have the original version or first copy (as the case may be) of the material;
- 5 (b) the copy or communication is made by or on behalf of the custodian of the public collection;
- (c) the copy or communication is made for the purpose of carrying out research at any premises where any public collection is held;
- 10 (d) the material (including any copies) is not supplied to any person for any other purpose;
- (e) before the copy is made, an authorised officer of the public collection —
  - (i) makes a reasonable investigation; and
  - 15 (ii) declares that he or she is satisfied that a new copy of the material could not be obtained within a reasonable time at an ordinary commercial price; and
- (f) in the case of subsection (1)(a) — the copy is notated according to section 301.

(3) For the purposes of this Act, the supply of copies of any material  
20 in circumstances to which this section applies —

- (a) is not to be treated as publishing the material (or any work or recording included in the material); and
- (b) must be ignored in determining the duration of any copyright in the material (or the included work).

25 **Research or study — copying or communicating unpublished thesis in university library or archive**

**228.**—(1) If the conditions in subsection (2) are met, it is a permitted use to make a copy of, or communicate, a thesis or a similar literary work.

(2) The conditions are —

- (a) the original version or a copy of the thesis or work is kept in a university library (including a similar institution) or an archive;
- (b) the thesis or work has not been published; 5
- (c) the copy or communication is made by or on behalf of the custodian of the library or archive;
- (d) the copy, thesis or work is communicated or otherwise supplied to a person who needs it for the purpose of research or study; and 10
- (e) an authorised officer of the library or archive is satisfied that the person needs the copy, thesis or work for that purpose.

(3) For the purposes of this Act, the supply of copies of a literary work in circumstances to which this section applies — 15

- (a) is not to be treated as publishing the work; and
- (b) must be ignored in determining the duration of any copyright in the work.

(4) In this section, a reference to a literary work includes a reference to an explanatory or illustrative artistic work accompanying the literary work. 20

### **Research, study or publication — copying or communicating unpublished old material in public collection**

**229.**—(1) If the conditions in subsection (2) are met, it is a permitted use to — 25

- (a) make a copy of any of the following material:
  - (i) an authorial work;
  - (ii) a sound recording;
  - (iii) a film;
  - (iv) a recording of a protected performance; or 30
- (b) communicate the material.

(2) The conditions are —

- (a) the material is unpublished old material in a public collection;
- 5 (b) the copy or communication is made for the purpose of research or study;
- (c) the copy or communication is made with a view to publishing the material; and
- 10 (d) the copy or communication is made by an authorised officer of the public collection and supplied to a person, and the officer is satisfied that the person —
  - (i) needs the copy or the material for research or study, or with a view to publication; and
  - (ii) will not use it for any other purpose.

15 (3) For the purposes of this Act, the supply of copies of any material in circumstances to which this section applies —

- (a) is not to be treated as publishing the material (or any work or recording included in the material); and
- (b) must be ignored in determining the duration of any copyright in the material (or the included work).

20 (4) In this section and section 230, any material is “unpublished old material in a public collection” if —

- (a) the material has not been published;
- (b) the original version or a copy of the material —
  - (i) is part of a public collection; and
  - 25 (ii) is, subject to any regulations governing that collection, open to public inspection;
- (c) where the material is an authorial work —
  - (i) more than 75 years have passed —
    - (A) since the work was made; or
    - 30 (B) if the work was made over a period — since the end of that period; and



(ii) either —

(A) the author of the work has died and more than 50 years have passed since the end of the year in which the author died; or

(B) every author of the work has died and more than 50 years have passed since the end of the year in which the last author died; and 5

(d) where the material is a film, a sound recording or a recording of a protected performance —

(i) more than 50 years have passed since the film or recording was made; or 10

(ii) if the film or recording was made over a period — more than 50 years have passed since the end of that period.

**Publication — publishing unpublished old authorial works in public collection** 15

**230.**—(1) It is a permitted use of an authorial work (called in this section the old work) to publish another authorial work (called in this section the new work) that includes the old work (or any part of the old work) if — 20

(a) immediately before the new work is first published —

(i) the old work is unpublished old material in a public collection; and

(ii) the publisher of the new work does not know who owns the copyright in the old work; and 25

(b) before the new work is first published, the prescribed notice of intended publication is given.

(2) To avoid doubt, if —

(a) the first publication of the new work only includes part of the old work; and 30

(b) a later publication of the new work includes any other part of the old work that was not included in any earlier publication,

then —

5 (c) subsection (1) does not apply to the later publication just because it applies to the first publication; and

(d) the later publication is to be treated as the first publication of the new work for the purposes of applying subsection (1).

10 (3) Where an authorial work, being unpublished old material in a public collection, is published in circumstances to which subsection (1) applies, the publication is deemed to be authorised.

**Publication — communicating, performing, etc., authorial work published under section 230**

15 **231.**—(1) This section applies where, by virtue of section 230, the publication of an authorial work (or part of the authorial work) is a permitted use.

(2) The following acts are also permitted uses if they are done after the publication:

20 (a) broadcasting the work (or part of the work);

(b) including the work (or part of the work) in a cable programme;

(c) performing the work (or part of the work) in public;

(d) making a record of the work (or part of the work).

25 **Preservation and replacement — copying material in public collection**

**232.**—(1) If the conditions in subsection (2) are met, it is a permitted use to make a copy of any of the following material:

(a) an authorial work;

30 (b) a sound recording;

(c) a film;

- (*d*) a recording of a protected performance.
- (2) The conditions are —
- (*a*) the material was or is part of a public collection;
  - (*b*) the copy is made by or on behalf of the custodian of the public collection; 5
  - (*c*) the copy is —
    - (*i*) made to preserve the material against loss, deterioration or damage;
    - (*ii*) made in a different format from the format in which the material is embodied, to preserve the material against the obsolescence of the latter format; 10
    - (*iii*) made to replace the material because of loss, deterioration or damage; or
    - (*iv*) made for some other purpose;
  - (*d*) if the copy is made under paragraph (*c*)(*i*) or (*ii*) — the copy is not made accessible to the public, except to replace a copy of the material that was previously accessible to the public; 15
  - (*e*) if the copy is made under paragraph (*c*)(*i*), (*ii*) or (*iii*) — before the copy is made, an authorised officer of the public collection — 20
    - (*i*) makes a reasonable investigation; and
    - (*ii*) declares that he or she is satisfied that a new copy of the material (or, in the case of paragraph (*c*)(*ii*), a new copy of the material in the different format) could not be obtained within a reasonable time at an ordinary commercial price; 25
  - (*f*) if the copy is made under paragraph (*c*)(*iv*) — the copy is the sole copy made under this section; and
  - (*g*) the copy is notated according to section 301. 30

**Administration — copying or communicating material in public collection**

**233.**—(1) If the conditions in subsection (2) are met, it is a permitted use to —

5           (a) make a copy of any of the following material:

                  (i) an authorial work;

                  (ii) a sound recording;

                  (iii) a film;

                  (iv) a recording of a protected performance; or

10           (b) communicate the material.

(2) The conditions are —

                  (a) the material was or is part of a public collection;

                  (b) the copy or communication is made by or on behalf of the custodian of the public collection;

15           (c) the copy or communication is made for any of the following purposes:

                  (i) internal record-keeping;

                  (ii) internal cataloguing;

                  (iii) insurance;

20           (iv) police investigations or other law enforcement actions;

                  (v) security;

                  (vi) any other administrative purpose; and

(d) the copy is not used other than —

25           (i) for the purposes mentioned in paragraph (c); or

                  (ii) to create another copy of the material in circumstances to which any permitted use in this Division applies.

30           (3) For the purposes of this Act, the supply of copies of any material in circumstances to which this section applies —

- (a) is not to be treated as publishing the material (or any work or recording included in the material); and
- (b) must be ignored in determining the duration of any copyright in the material (or the included work).

**Supplying copies of published literary, dramatic or musical works or articles between libraries and archives**

5

**234.**—(1) This section applies if —

- (a) a copy is made of —
  - (i) a published literary, dramatic or musical work; or
  - (ii) an article in a periodical publication; 10
- (b) the copy is made or caused to be made —
  - (i) by an authorised officer of library *X*; and
  - (ii) on a written request by or on behalf of an authorised officer of library *Y* (which may be within or outside Singapore); 15
- (c) the copy is requested for the purpose of —
  - (i) including the copy in the collection of library *Y*, but not as a substitute for subscribing to or buying the work or periodical publication; or
  - (ii) supplying the copy to a person who has requested the copy in accordance with section 226; 20
- (d) the copy is notated according to section 301;
- (e) the copy is supplied to the authorised officer of library *Y* and to no other person;
- (f) any fee for making and supplying the copy does not exceed the cost of making and supplying the copy plus a reasonable contribution to the general expenses of library *X*; and 25
- (g) no prescribed exclusion applies.

## (2) Where this section applies —

(a) no action may be brought against library *X* or any of its officers or employees for any infringement of copyright constituted by the making and supply of the copy;

5 (b) the copy is deemed for all purposes of this Act to have been made by an authorised officer of library *Y* (and not library *X*) for the purposes for which it is requested; and

10 (c) the making of the copy by an authorised officer of library *Y* (as deemed by paragraph (b)) is a permitted use if, as soon as practicable after the request in subsection (1)(b)(ii) is made, an authorised officer of library *Y* makes a declaration stating —

(i) the particulars of the request, including the purpose for requesting the copy;

15 (ii) if the copy is requested for inclusion in the collection of library *Y* and a similar copy has previously been made and supplied under this section — that the previous copy is lost, destroyed or damaged; and

20 (iii) if the copy requested for is a copy of the whole of an authorial work (other than an article in a periodical publication) or a portion of the work that exceeds a reasonable portion —

(A) that the copy is made and supplied as part of an inter-library arrangement; and

25 (B) that the arrangement does not have the effect or the purpose of enabling participating libraries to systematically copy and supply copies of authorial works, and thereby obtain copies of authorial works without having to subscribe to or buy the authorial works.

30

## (3) In this section —

(a) “library” means a non-profit library, and includes a non-profit archive; and

- (b) a reference to a literary, dramatic or musical work (including an article in a periodical publication) includes a reference to an explanatory or illustrative artistic work accompanying the literary, dramatic or musical work (or the article).

5

**Protection of libraries and archives when infringing copies made on machines installed by them**

**235.**—(1) This section applies where —

- (a) a machine is installed by or with the approval of the custodian of a library —

10

- (i) on the premises of the library; or  
 (ii) outside the premises of the library, but for the convenience of persons using the library;

- (b) a notice in the prescribed form and dimensions is placed on or near the machine, in a way that is readily visible to a person using the machine; and

15

- (c) either —

- (i) the machine —

(A) is for making facsimile copies of documents (whether or not in the same size or form); and

20

(B) is used to make an infringing copy of an authorial work or a published edition of an authorial work; or

- (ii) the machine is used to make an infringing copy of —

(A) a sound recording, film, broadcast or cable programme; or

25

(B) a protected performance.

(2) The custodian of the library is not taken to have authorised the making of the infringing copy just because the infringing copy is made on the machine.

30

(3) In this section —

“library” includes an archive;

“machine” includes a computer.

### **Copying online material for National Library Board collection**

5 **236.**—(1) If the conditions in subsection (2) are met, it is a permitted use to make a copy of any of the following material:

(a) an authorial work;

(b) a sound recording;

(c) a film;

10 (d) a recording of a protected performance.

(2) The conditions are —

(a) the material is or is part of online material;

(b) the online material is available on a Singapore website; and

(c) the copy is made —

15 (i) by or on behalf of the National Library Board; and

(ii) for the purpose of acquiring the online material for the purposes of section 6(d) of the National Library Board Act.

20 (3) In this section, “online material” and “Singapore website” have the meanings given by section 2 of the National Library Board Act.

### *Division 7 — Use of computer programs*

#### **Making back-up copy of computer program**

**237.**—(1) If the conditions in subsection (2) are met, it is a permitted use to make a copy of a computer program.

25 (2) The conditions are —

(a) the copy is not made from an infringing copy of the program; and



(b) the copy is made —

- (i) by or on behalf of the owner of the copy of the program from which the copy is made; and
- (ii) only for the purpose of being used by or on behalf of the owner if that copy is lost, destroyed or cannot be used.

5

(3) In this section, a reference to a copy of a computer program is a reference to any article in which the computer program is reproduced in a material form.

### **Copying electronic compilation or computer program when essential for use**

10

**238.**—(1) If the conditions in subsection (2) are met, it is a permitted use for a person (*X*) to make, or authorise the making of, a copy or an adaptation of —

- (a) a compilation in an electronic form; or
- (b) a computer program.

15

(2) The conditions are —

- (a) the copy or adaptation is made from a copy of the compilation or program that is owned by *X*;
- (b) creating the copy or adaptation is an essential step in using the compilation or program with a machine; and
- (c) the copy or adaptation is not used in any other way.

20

(3) In this section —

- (a) a reference to a copy of a compilation or computer program is a reference to any article in which the compilation or program is reproduced in a material form; and
- (b) a reference to an adaptation of a compilation or computer program is a reference to any article in which the adaptation is reproduced in a material form.

25

**Decompilation of computer program by lawful user**

**239.**—(1) If the conditions in subsection (2) are met, it is a permitted use for a person (*X*) to decompile a computer program.

(2) The conditions are —

- 5           (a) the program is expressed in a low-level language;
- (b) *X* is a lawful user of the program;
- (c) the decompiling is necessary to obtain the information needed for the purpose of creating an independent computer program that can be operated with the
- 10           decompiled program or another computer program;
- (d) the information needed for that purpose is not otherwise readily available to *X*;
- (e) *X* confines the decompiling to acts that are needed for that purpose;
- 15           (f) *X* does not use the information obtained from decompiling for anything other than that purpose;
- (g) *X* does not supply the information obtained from decompiling to any person unless it is necessary for that purpose;
- 20           (h) *X* does not use the information obtained from decompiling to create a computer program that is substantially similar in its expression to the decompiled program; and
- (i) *X* does not use the information obtained from decompiling to do any act that is an infringement of copyright.

25   (3) In this section, “decompiling”, in relation to a computer program expressed in a low-level language, means —

- (a) converting the computer program into a version expressed in a higher level language; or
- (b) copying the computer program incidentally in the course of
- 30           paragraph (a),

and “decompile” has a corresponding meaning.

### **Observing, studying and testing of computer program by lawful user**

**240.**—(1) If the conditions in subsection (2) are met, it is a permitted use for a person (*X*) to observe, study or test the functioning of a computer program. 5

(2) The conditions are —

(a) *X* is a lawful user of the program; and

(b) the observing, studying or testing is done —

(i) to determine the ideas and principles that underlie any element of the program; and 10

(ii) while *X* is performing any act of loading, displaying, running, transmitting or storing the program that *X* is entitled to do.

### **Copying or adapting of computer program by lawful user**

**241.**—(1) If the conditions in subsection (2) are met, it is a permitted use for a person (*X*) to make a copy or an adaptation of a computer program. 15

(2) The conditions are —

(a) *X* is a lawful user of the program;

(b) making the copy or adaptation is necessary for *X*'s lawful use; and 20

(c) making the copying or adaptation is not a permitted use under section 237, 238 or 239.

(3) To avoid doubt, it may be necessary for the lawful use of a computer program to make a copy or an adaptation of the program to correct errors in the program. 25

### **Interpretation: who is a lawful user**

**242.** In this Division, a person is a “lawful user” of a computer program if the person has a right to use the program (whether under a licence to do any act comprised in the copyright in the program or otherwise). 30

*Division 8 — Computational data analysis*

**Interpretation: what is computational data analysis**

**243.** In this Division, “computational data analysis”, in relation to a work or a recording of a protected performance, includes —

- 5 (a) using a computer program to identify, extract and analyse information or data from the work or recording; and
- (b) using the work or recording as an example of a type of information or data to improve the functioning of a computer program in relation to that type of information or data.

10

*Illustration*

An example of computational data analysis under paragraph (b) is the use of images to train a computer program to recognise images.

15

**Copying or communicating for computational data analysis**

**244.—**(1) If the conditions in subsection (2) are met, it is a permitted use for a person (*X*) to make a copy of any of the following material:

20

- (a) a work;
- (b) a recording of a protected performance.

(2) The conditions are —

25

- (a) the copy is made for the purpose of —
  - (i) computational data analysis; or
  - (ii) preparing the work or recording for computational data analysis;
- (b) *X* does not use the copy for any other purpose;
- (c) *X* does not supply (whether by communication or otherwise) the copy to any person other than for the purpose of —

30

- (i) verifying the results of the computational data analysis carried out by *X*; or

- (ii) collaborative research or study relating to the purpose of the computational data analysis carried out by *X*;
- (d) *X* has lawful access to the material (called in this section the first copy) from which the copy is made; and

5

*Illustrations*

(a) *X* does not have lawful access to the first copy if *X* accessed the first copy by circumventing paywalls.

(b) *X* does not have lawful access to the first copy if *X* accessed the first copy in breach of the terms of use of a database (ignoring any terms that are void by virtue of section 187).

10

(e) one of the following conditions is met:

(i) the first copy is not an infringing copy;

(ii) the first copy is an infringing copy but —

(A) *X* does not know this; and

15

(B) if the first copy is obtained from a flagrantly infringing online location (whether or not the location is subject to an access disabling order under section 325) — *X* does not know and could not reasonably have known that;

20

(iii) the first copy is an infringing copy but —

(A) the use of infringing copies is necessary for a prescribed purpose; and

(B) *X* does not use the copy to carry out computational data analysis for any other purpose.

25

(3) To avoid doubt, a reference in subsection (1) to making a copy includes a reference to storing or retaining the copy.

(4) It is a permitted use for *X* to communicate a work or a recording of a protected performance to the public if —

30

(a) the communication is made using a copy made in circumstances to which subsection (1) applies; and

(b) *X* does not supply (whether by communication or otherwise) the copy to any person other than for the purpose of —

(i) verifying the results of the computational data analysis carried out by *X*; or

(ii) collaborative research or study relating to the purpose of the computational data analysis carried out by *X*.

(5) For the purposes of this Act, the supply of copies of any material in circumstances to which this section applies —

(a) is not to be treated as publishing the material (or any work or recording included in the material); and

(b) must be ignored in determining the duration of any copyright in the material (or the included work).

*Division 9 — Communication of sound recordings and recordings of protected performances*

**Interpretation: what is an interactive service**

**245.** In this Division, “interactive service” —

(a) means a service that enables an individual to receive —

(i) a transmission of a programme specially created for that individual; or

(ii) on request, a transmission (whether or not as part of a programme) of a particular sound recording or a particular recording of a protected performance that is selected by or on behalf of that individual;

(b) includes a service —

(i) that enables an individual to request that a particular sound recording or a particular recording of a protected performance be performed for reception —

(A) by the public at large; or

- (B) in the case of a subscription service — by all subscribers of that service; and
- (ii) where the programming on each channel of the service consists substantially of sound recordings or recordings of protected performances that are performed either within an hour of the request or at a time designated by that individual; but
- (c) does not include a service to which paragraph (b)(i) applies but not paragraph (b)(ii).

### **Communication by analogue broadcast**

**246.**—(1) If the conditions in subsection (2) are met, it is a permitted use for a person (*X*) to communicate —

- (a) a sound recording; or
- (b) a recording of a protected performance.

(2) The conditions are —

- (a) the communication is by means of an analogue broadcast; and
- (b) the recording —
  - (i) is not commercially published; or
  - (ii) is commercially published and *X* pays to the rights owner equitable remuneration of an amount —
    - (A) agreed between them; or
    - (B) in default of agreement, decided by a Copyright Tribunal.

### **Communication by non-interactive digital broadcast**

**247.**—(1) If the conditions in subsection (2) are met, it is a permitted use for a person (*X*) to communicate —

- (a) a sound recording; or
- (b) a recording of a protected performance.

(2) The conditions are —

(a) the communication is by means of a digital broadcast that —

(i) is not part of an interactive service; and

(ii) is available to the public free of charge; and

(b) the recording —

(i) is not commercially published; or

(ii) is commercially published and *X* pays to the copyright owner equitable remuneration of an amount —

(A) agreed between them; or

(B) in default of agreement, decided by a Copyright Tribunal.

(3) If the conditions in subsection (4) are met, it is a permitted use for a person (*X*) to communicate —

(a) a sound recording; or

(b) a recording of a protected performance.

(4) The conditions are —

(a) the communication is by means of a digital broadcast that —

(i) is not part of an interactive service; and

(ii) is not available to the public free of charge; and

(b) *X* pays to the copyright owner equitable remuneration of an amount —

(i) agreed between them; or

(ii) in default of agreement, decided by a Copyright Tribunal.



### **Communication by other analogue or non-interactive digital transmission**

**248.**—(1) If the conditions in subsection (2) are met, it is a permitted use for a person (*X*) to communicate —

- (a) a sound recording; or 5
- (b) a recording of a protected performance.

(2) The conditions are —

- (a) the communication is an analogue transmission (but not an analogue broadcast); or
- (b) the communication is a digital transmission (but not a digital broadcast) that is not part of an interactive service, and *X* pays to the copyright owner equitable remuneration of an amount — 10
  - (i) agreed between them; or
  - (ii) in default of agreement, decided by a Copyright Tribunal. 15

### *Division 10 — Films*

#### **Films depicting historical events**

**249.**—(1) This section applies where —

- (a) the visual images of a film consist wholly or mainly of images that, when they were first embodied in an article or a thing, were means of communicating news; and 20
- (b) 50 years have passed since the end of the year during which the main events depicted in the film occurred.

(2) It is a permitted use to — 25

- (a) cause the visual images of the film to be seen in public;
- (b) cause any sounds of the film to be heard in public; or
- (c) do both of those acts.

### Using record of sounds in films

**250.**—(1) This section applies where —

- (a) the sounds embodied in the sound-track of a film are also embodied in a record; and
  - 5 (b) the record is not the sound-track or derived, directly or indirectly, from the sound-track.
- (2) Any use of the record is a permitted use of the film.

*Division 11 — Broadcasting, cable programmes  
and simulcasting*

### 10 Making sound recordings or films of literary, dramatic and musical works for broadcasting

**251.**—(1) If the conditions in subsection (2) are met, it is a permitted use for a person (*X*) to make a copy of a literary, dramatic or musical work.

15 (2) The conditions are —

- (a) the copy is a sound recording or film of the work;
- (b) the copy is made for the sole purpose of broadcasting the work;
- (c) *X* would not infringe the copyright in the work by
- 20 broadcasting the work;
- (d) the copy is used only —
  - (i) for the purpose of broadcasting the work in circumstances that do not constitute an infringement of the copyright in the work; or
  - 25 (ii) to make more copies for that purpose;
- (e) if *X* is not the person broadcasting the work —
  - (i) *X* pays the copyright owner an amount agreed between them for the making of the copy; or
  - 30 (ii) *X* undertakes in writing to pay the copyright owner the amount that a Copyright Tribunal decides is

equitable remuneration for the making of the copy;  
and

(f) within the prescribed time, every copy made under this section is —

- (i) delivered to the National Archives with the consent of the Director of National Archives; or
- (ii) destroyed.

5

### **Making films of artistic works for television broadcasting or cable programmes**

**252.**—(1) If the conditions in subsection (2) are met, it is a permitted use for a person (*X*) to make a film of an artistic work.

10

(2) The conditions are —

- (a) the film is made for the sole purpose of including the work in a television broadcast or cable programme;
- (b) *X* would not infringe the copyright in the work by including it in a television broadcast or cable programme;
- (c) the first copy of the film is used only —
  - (i) for the purpose of including the work in a television broadcast or cable programme in circumstances that do not infringe the copyright in the work; or
  - (ii) to make further copies for that purpose;
- (d) if *X* is not the maker of the television broadcast or cable programme —
  - (i) *X* pays to the copyright owner an amount agreed between them for the making of the film; or
  - (ii) *X* undertakes in writing to pay the copyright owner the amount that a Copyright Tribunal decides is equitable remuneration for the making of the film; and
- (e) within the prescribed time, every copy of the film made under this section is —

15

20

25

30

- (i) delivered to the National Archives with the consent of the Director of National Archives; or
- (ii) destroyed.

**Copying sound recordings or recordings of performances for broadcasting**

**253.**—(1) If the conditions in subsection (2) are met, it is a permitted use for a person (*X*) to —

(a) make a copy of —

(i) a sound recording; or

(ii) a recording of a protected performance; or

(b) record a protected performance live.

(2) The conditions are —

(a) the copy or recording is made for the sole purpose of broadcasting the recording;

(b) the copy or recording is used only —

(i) for the purpose of broadcasting the copy or recording in circumstances that do not constitute a rights infringement in relation to the sound recording or protected performance; or

(ii) to make further copies for that purpose;

(c) if *X* is not the person broadcasting the recording —

(i) *X* pays to the rights owner an amount agreed between them for the making of the copy or recording; or

(ii) *X* undertakes in writing to pay the rights owner the amount that a Copyright Tribunal decides is equitable remuneration for the making of the copy or recording; and

(d) within the prescribed time, every copy or recording made under this section is —

(i) delivered to the National Archives with the consent of the Director of National Archives; or

(ii) destroyed.

### **Checking whether broadcast of sound recording or recording of performance is lawful**

**254.**—(1) This section applies where a sound recording, a protected performance or a recording of a protected performance is intended for broadcast or is broadcast. 5

(2) The following acts are permitted uses if they are done for the purpose of checking whether the broadcast or intended broadcast complies with any written law administered by a statutory authority:

- (a) making a copy of the sound recording or recording of the protected performance for the authority; 10
- (b) supplying the sound recording or recording of the protected performance to the authority;
- (c) any use of the sound recording or recording of the protected performance by the authority or any of its authorised officers; 15
- (d) recording the protected performance live.

### **Making sound recordings or films of literary, dramatic or musical works for simulcasting**

**255.**—(1) If the conditions in subsection (2) are met, it is a permitted use for a person to make a copy of a literary, dramatic or musical work. 20

(2) The conditions are —

- (a) the copy is a sound recording or film of the work;
- (b) broadcasting the work would not infringe the copyright in the work; 25
- (c) the copy is made for the sole purpose of simulcasting the work in digital form;

(d) the copy is used only —

(i) for the purpose of simulcasting the work in circumstances that do not constitute an infringement of the copyright in the work; or

5 (ii) to make more copies for that purpose; and

(e) every copy made under this section is destroyed within the prescribed time.

(3) In this section and section 256, “simulcasting” means simultaneously broadcasting in both analogue form and digital form.

10 **Copying sound recordings, recordings of performances, or films for simulcasting**

**256.**—(1) If the conditions in subsection (2) are met, it is a permitted use to make a copy of any of the following material:

(a) a sound recording;

15 (b) a film;

(c) a recording of a protected performance.

(2) The conditions are —

(a) broadcasting the material would not be a rights infringement in relation to the material;

20 (b) the copy is made for the sole purpose of simulcasting the material in digital form;

(c) the copy is used only —

25 (i) for the purpose of simulcasting the material in circumstances that do not constitute a rights infringement in relation to the material; or

(ii) to make further copies for that purpose; and

(d) every copy of the material made under this section is destroyed within the prescribed time.

### **Reception of broadcasts or cable programmes**

**257.**—(1) It is a permitted use of a literary, dramatic or musical work for a person to —

- (a) receive a broadcast or a cable programme; and
- (b) thereby cause the work to be seen or heard (or both) in public. 5

(2) It is a permitted use of a sound recording or a recording of a protected performance for a person to —

- (a) receive a broadcast or a cable programme; and
- (b) thereby cause the recording to be heard in public. 10

### **Deemed copyright licences when receiving or transmitting broadcasts or cable programmes**

**258.**—(1) A person is deemed to have the licence of the copyright owner of a film to —

- (a) cause the visual images of the film to be seen in public or any sounds of the film to be heard in public (or both) by receiving a television broadcast or cable programme; and 15
- (b) cause the film to be included in a programme in a cable programme service by receiving and immediately re-transmitting a Singapore broadcast. 20

(2) A person is deemed to have the licence of the copyright owner of a sound recording to —

- (a) cause the recording to be heard in public by receiving a broadcast or cable programme; and
- (b) cause the recording to be included in a programme in a cable programme service by receiving and immediately re-transmitting a Singapore broadcast. 25

(3) A person is deemed to have the licence of the copyright owner of an authorial work (or of an adaptation of the work) to cause the work (or the adaptation) to be included in a programme in a cable programme service by receiving and immediately re-transmitting a Singapore broadcast. 30

(4) To avoid doubt, subsections (1)(b), (2)(b) and (3) do not extend to making the film, recording, work or adaptation available on a network.

5 (5) If the broadcast or cable programme mentioned in subsection (1), (2) or (3) is not made by or with the licence of the relevant copyright owner —

(a) this does not prevent any of those provisions from applying; but

10 (b) the acts that are licensed by those provisions must be taken into account in assessing damages for any infringement of the copyright by the maker of the broadcast or programme.

(6) In this section, “Singapore broadcast” means a broadcast made from a place in Singapore by the holder of a broadcasting licence.

### *Division 12 — Making musical records*

#### 15 **Interpretation and scope of this Division**

**259.**—(1) In this Division —

“musical work” means a musical work in its original form or an adaptation of the work;

20 “owner”, in relation to the copyright in a literary, dramatic or musical work, means, unless the contrary intention appears, the person who is entitled to authorise the making in, and the importation into, Singapore of records of the works;

“record”, in relation to a musical work, excludes a sound-track of a film;

25 “sale by retail” or “retail sale”, in relation to a record, does not include —

(a) sale for a consideration that does not consist wholly of money; or

30 (b) sale by a person who does not ordinarily carry on the business of making or selling records.



(2) In this Division, where a musical work is comprised partly in one record and partly in another record or other records, all the records are treated as a single record.

(3) Subject to section 260(4), this Division applies in relation to a record of a part of a musical work as it applies in relation to a record of the whole of the work.

### Conditions for making musical records

**260.**—(1) Subject to subsections (3) and (4), it is a permitted use for a person (*X*) to make a record of a musical work (or of an adaptation of the work) if —

- (a) the record is made in Singapore;
- (b) other records of the work (or of a similar adaptation of the work) have previously been made in Singapore, or imported into Singapore, for retail sale or for making further records for retail sale;
- (c) those other records were made or imported by or with the licence of the copyright owner;
- (d) before making the record, *X* gives the prescribed notice to the copyright owner;
- (e) *X* intends to —
  - (i) sell the record by retail;
  - (ii) supply the record to another person for it to be sold by retail; or
  - (iii) use the record to make other records to be sold by retail or supplied to other persons to be sold by retail; and
- (f) in the case of paragraph (e)(i) or (ii), *X* pays to the copyright owner the prescribed royalty in the prescribed manner and within the prescribed time.

(2) Subsection (1)(b) and (c) is deemed to be satisfied if *X*, or any person that makes an agreement with *X* to make and supply the record —

(a) makes the prescribed inquiries; and

(b) receives no answer within the prescribed time.

(3) Subsection (1) does not apply to making a record of an adaptation of a musical work if the adaptation debases the work.

5 (4) Subsection (1) does not apply in relation to —

(a) a record of the whole of a musical work unless the previous records mentioned in subsection (1)(b) are records of the whole of the work; and

10 (b) a record of a part of a musical work unless the previous records mentioned in subsection (1)(b) are records of, or include, that part of the work.

### **Conditions for including literary or dramatic work in musical record**

**261.**—(1) This section applies where —

15 (a) a person (*X*) makes a record of a performance of a musical work; and

(b) in the recorded performance, some or all of the words of a literary or dramatic work are sung, or spoken, incidentally to or in association with the music.

20 (2) The making of the record is a permitted use of the literary or dramatic work if —

(a) the record is made in Singapore;

(b) either —

25 (i) the making of the record is a permitted use of the musical work under section 260; or

(ii) copyright does not subsist in the musical work;

(c) records of the musical work have previously been made in Singapore, or imported into Singapore, for retail sale or for making other records for retail sale;

- (d) those records were made or imported by or with the licence of the owner of the copyright in the literary or dramatic work;
- (e) in those records, the words mentioned in subsection (1) or substantially similar words are sung, or spoken, incidentally to or in association with the music; 5
- (f) before making the record, *X* gives the prescribed notice to the owner of the copyright in the literary or dramatic work; and
- (g) *X* pays to the owner of the copyright in the literary or dramatic work the prescribed royalty in the prescribed manner and within the prescribed time. 10

(3) Subsection (2)(c) and (d) is deemed to be satisfied if *X* or the person selling the record —

- (a) makes the prescribed inquiries; and 15
- (b) receives no answer within the prescribed time.

**Regulations and inquiry on amount of royalties**

**262.**—(1) The Minister may make regulations to prescribe the royalty payable to a copyright owner under this Division, including any minimum royalty and any circumstances in which no royalty or no further royalty needs to be paid or apportioned. 20

(2) The Minister may request a Copyright Tribunal to inquire into and report on whether the royalty prescribed under subsection (1) is equitable (whether generally or for a class of records).

(3) Where a report is made under subsection (2) in respect of a class of records (whether or not the report is confined to those records), the Minister may not request another inquiry in respect of that class of records within 5 years after the report is made. 25

(4) To avoid doubt, the power to make regulations under subsection (1) does not depend on and is not limited by subsections (2) and (3). 30

(5) In this section, “Minister” means the Minister charged with the responsibility for trade and industry.

### **Regulations on other matters**

**263.** The Minister may prescribe any matter for the purpose of this Division (other than matters that may be prescribed under section 262), including —

- 5           (a) the manner in which, and the time within which, the royalty for a record must be paid;
- (b) requiring the royalty (or any part of the royalty) for a record is to be paid before the record is sold or supplied by the person making the record;
- 10           (c) providing that the royalty for a record is deemed to be paid —
  - (i) by doing a specified act that the Minister considers convenient for ensuring that the copyright owner receives the royalty; or
  - 15           (ii) if the copyright owner cannot be found by reasonable inquiry — by doing a specified act that the Minister considers reasonable; and
- (d) any other circumstances in which the royalty is deemed to be paid.

### **20   Modifications relating to records made before 10 April 1987**

**264.**—(1) This section applies to a record made before 10 April 1987 of a musical work.

(2) If the record is made by (or with the consent or acquiescence of) the owner of the copyright in the work under the 1911 Act, the record is deemed, for the purposes of this Division —

- 25           (a) to have been made in Singapore for the purpose of retail sale; and
- (b) to have been so made by or with the licence of the person who is entitled under this Act to authorise the making in
- 30           Singapore of records of the work.

(3) The following written laws as in force immediately before 10 April 1987 continue to apply in relation to the record:

- (a) section 19(2) to (7) of the 1911 Act;
- (b) subject to that section, any regulations made for the purposes of that section.

*Division 13 — Artistic works*

**Buildings and certain artistic works in public places**

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**265.**—(1) This section applies to the following artistic works:

- (a) a building or a model of a building;
- (b) a sculpture located (other than temporarily) in a public place or in premises open to the public;
- (c) a work under paragraph (a)(iii) of the definition of “artistic work” in section 20(1), but only if it is located (other than temporarily) in a public place or in premises open to the public.

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(2) The following are permitted uses of the work:

- (a) making a painting, a drawing, an engraving or a photograph of the work;
- (b) publishing a painting, a drawing, an engraving or a photograph of the work, but only if —
  - (i) the painting, drawing, engraving or photograph is made on or after 10 April 1987; or
  - (ii) the painting, drawing, engraving or photograph was made before 10 April 1987 and the making would have been a permitted use under paragraph (a) if this Act had been in operation at the time of the making;
- (c) including the work in a film;
- (d) publishing a film that includes the work, but only if —
  - (i) the film is made on or after 10 April 1987; or
  - (ii) the film was made before 10 April 1987 and the making would have been a permitted use under paragraph (c) if this Act had been in operation at the time of the making;

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- (e) including the work in a television broadcast or cable programme.

### **Incidental inclusion in film, television broadcast or cable programme**

5 **266.**—(1) If the condition in subsection (2) is met, it is a permitted use of an artistic work to —

(a) include the work in a film, television broadcast or cable programme; or

10 (b) publish a film that includes the work, but only if the film is made on or after 10 April 1987.

(2) The inclusion must be only incidental to the main content of the film, broadcast or programme.

### **Copying artistic work in different dimensions**

15 **267.**—(1) If the condition in subsection (2) is met, it is a permitted use of an artistic work to —

(a) if the work is 2-dimensional — make a 3-dimensional object of any kind; and

(b) if the work is 3-dimensional — make a 2-dimensional object of any kind.

20 (2) The object must not appear, to persons who are not experts in objects of that kind, to be a copy of the work.

### **Copying part of artistic work in later artistic work**

**268.**—(1) It is a permitted use of an artistic work to make a later artistic work if —

25 (a) both works are made by the same author; and

(b) the later work does not repeat or imitate the main design of the earlier work.

(2) Subsection (1) applies even if —

(a) part of the earlier work is reproduced in the later work; and

- (b) in making the later work, the author uses a mould, cast, sketch, plan, model or study made for the purposes of the earlier work.

### **Reconstruction of buildings**

**269.**—(1) It is a permitted use of an artistic work, being a building, to reconstruct the building. 5

(2) It is a permitted use of architectural drawings or plans to reconstruct a building according to those drawings or plans if —

- (a) another building has earlier been constructed according to those drawings or plans; and 10
- (b) the earlier construction is done by or with the consent of the copyright owner (either at the time of the earlier construction or after that).

*Division 14 — Artistic works with corresponding designs  
and industrially applied artistic works* 15

### **Interpretation of this Division**

**270.** In this Division —

- “corresponding design”, in relation to an artistic work, has the meaning given by section 2(1) of the Registered Designs Act;
- “device” means a device for projecting a non-physical product (as defined by section 2(3) of the Registered Designs Act); 20
- “exclusive rights”, in relation to a design that is or could have been registered under the Registered Designs Act, means all the exclusive rights that the registration of a design under that Act gives or would give to the registered owner of the design; 25
- “product” means a non-physical product as defined by section 2(1) of the Registered Designs Act;
- “register” means register under the Registered Designs Act;
- “registered design” means a design that is registered under the Registered Designs Act; 30

“similar design”, in relation to a corresponding design, means a design that consists of the corresponding design with modifications or variations not sufficient to alter the character or substantially to affect the identity of the corresponding design;

“UK Act” means the Registered Designs Act 1949 of the United Kingdom (U.K. 1949, c. 88).

### **Purpose of this Division**

**271.** The purpose of this Division is to restrict the application of copyright law in relation to an artistic work with a corresponding design that is, has been or could be applied to —

- (a) articles or products, under the Registered Designs Act; or
- (b) useful articles.

### **Artistic work with corresponding design that is or was registered under Registered Designs Act**

**272.**—(1) This section applies where there is, in relation to an artistic work, a corresponding design that is or is deemed to be registered.

(2) Subject to section 273, it is a permitted use of the artistic work to —

- (a) while the registration is still in force — do any act that is within the exclusive rights in the corresponding design; or
- (b) after the registration is no longer in force — do any act that would have been within —

- (i) the exclusive rights in the corresponding design; or
- (ii) the exclusive rights in any possible similar design, if the corresponding design and all possible similar designs had been registered in respect of all the articles and products to which they were capable of being applied.



**Modification of section 272 if registration is false**

**273.**—(1) Subject to subsection (2), section 272 does not apply in any proceedings for an infringement of the copyright in the artistic work if —

- (a) the registration of the corresponding design is still in force before the proceedings begin; and 5
- (b) it is proved or admitted in those proceedings that —
  - (i) the person registered or deemed to be registered as the owner of the design is not in fact —
    - (A) the owner of the design for the purposes of the Registered Designs Act; or 10
    - (B) the proprietor of the design for the purposes of the UK Act; and
  - (ii) the person is registered as the owner or proprietor of the design without the knowledge of the owner of the copyright in the artistic work. 15

(2) Despite subsection (1), section 272 still applies to an act to which those proceedings relate if it is proved or admitted in those proceedings that the act was done —

- (a) under an assignment made, or licence granted, by the registered owner of the design; 20
- (b) in good faith in reliance upon the registration; and
- (c) without notice of any proceedings for the cancellation or revocation of the registration (as the case may be) or for rectifying the entry in the relevant register of designs. 25

(3) If section 272 does not apply to any proceedings by virtue of this section, nothing in any law relating to industrial design is to be construed as affording a defence in those proceedings.

**Artistic work with industrially-applied corresponding design that could have been registered under Registered Designs Act** 30

**274.**—(1) Subject to subsection (3), this section applies where —

- (a) copyright subsists in an artistic work;

- (b) there is a corresponding design in relation to the work;
- (c) the corresponding design is applied industrially (whether in Singapore or elsewhere) to articles or products;
- 5 (d) the industrial application is done by or with the consent of the copyright owner;
- (e) those articles or products, or devices for projecting those products, are commercially dealt with; and
- (f) when those articles, products or devices are commercially dealt with, no corresponding design relating to those articles or products is or is deemed to be registered.

(2) Subject to subsection (3), it is a permitted use of the artistic work to —

- 15 (a) during the period of 15 years starting from the date of the first commercial dealing in those articles, products or devices — do any act that would have been within the exclusive rights in the corresponding design if the design had been registered in respect of all of those articles and products; and
- 20 (b) after the end of that period — do any act that would have been within —
  - (i) the exclusive rights in the corresponding design; or
  - (ii) the exclusive rights in any possible similar design, if the corresponding design and all possible similar designs had been registered in respect of all of those articles and products to which they are capable of being applied.

(3) For the purposes of subsections (1) and (2), an article, a product or a device must be ignored if —

- 25 (a) the corresponding design applied to the article or product is primarily literary or artistic in character; and
- 30 (b) when the article, product or device is commercially dealt with, designs for the article, product or device are excluded from registration by rules made under the Registered Designs Act or the UK Act.

(4) For the purposes of any proceedings under this Act, a design is conclusively presumed to have been excluded under subsection (3) if —

- (a) before those proceedings begin —
  - (i) an application for the registration of the design in respect of the article or product under the Registered Designs Act has been refused; or 5
  - (ii) an application made before 13 November 2000 for the registration of the design in respect of the article under the UK Act has been refused; 10
- (b) a (or the) stated reason for the refusal was that the design was excluded from registration by rules made under the Registered Designs Act or the UK Act; and
- (c) no appeal against that refusal —
  - (i) is allowed before the proceedings begin; or 15
  - (ii) is pending when the proceedings begin.

(5) Regulations may prescribe what constitutes the industrial application of a design for the purposes of this section.

(6) For the purposes of this section, an article, a product or a device is commercially dealt with if it is sold, let for hire, or offered or exposed for sale or hire (whether in Singapore or elsewhere) and “commercial dealing” has a corresponding meaning. 20

### **Artistic works that have been industrially applied**

**275.**—(1) If the condition in subsection (2) is met, it is a permitted use of an artistic work to make — 25

- (a) a useful article in 3 dimensions;
- (b) a 2-dimensional copy that is reasonably required to make a useful article in 3 dimensions; or
- (c) a product.

(2) The work must have been applied industrially (whether in Singapore or elsewhere) before the article, copy or product was made. 30

(3) Regulations may prescribe what constitutes the industrial application of a work for the purposes of this section.

(4) In this section, “useful article” —

5 (a) means an article with an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information; and

(b) includes an article that is normally part of a useful article.

### **Application to artistic works made before 10 April 1987**

10 **276.** This Division (except section 275) does not apply to an artistic work made before 10 April 1987.

*Division 15 — Material in public registers,  
publicly disclosed material and  
data sharing within public sector*

### **Interpretation: what is a public register**

15 **277.**—(1) In this Division, “public register” —

(a) subject to paragraphs (b) and (c), means any collection (however named) of documents or materials to which the following criteria apply:

20 (i) the collection is maintained by the Government or a public body under any written law;

(ii) the Government or public body (as the case may be) is required or permitted by law —

(A) to open the collection for inspection by the public (whether for a fee or not); or

25 (B) to provide copies of the documents or materials to a member of the public (whether for a fee or not);

(b) includes any prescribed collection of documents or materials; and

30 (c) does not include a public collection and any prescribed collection of documents or materials.

(2) For the purposes of subsection (1)(a)(ii) and without otherwise affecting the meaning of “public” in this Act, public includes a segment of the public.

### **Copying or communicating material in public registers**

**278.**—(1) If the conditions in subsection (2) are met, it is a permitted use to — 5

(a) make a copy of any of the following material:

(i) a work;

(ii) a recording of a protected performance; or

(b) communicate the material to the public. 10

(2) The conditions are —

(a) the material is part of a public register;

(b) if the register is maintained by the Government — the copy or communication is made by or with the authority of the Government; 15

(c) if the register is maintained by a public body — the copy or communication is made by or with the authority of the public body; and

(d) the copy or communication is made —

(i) to facilitate the inspection of the register, or the provision of copies from the register, as required or permitted by law; 20

(ii) to facilitate the exercise of any right that the law mentioned in sub-paragraph (i) is meant to facilitate; or 25

(iii) for the purpose of maintaining the register.

(3) Where —

(a) an act is a permitted use of any material under this section; and

(b) copies of the material are supplied to the public as part of, or incidentally to, that act,

the supply of those copies —

(c) is not to be treated, for the purposes of this Act, as publishing the material (or any work or recording included in the material); and

(d) must be ignored in determining the duration of any copyright in the material (or the included work).

### **Copying literary or artistic works in public registers**

**279.**—(1) If the conditions in subsection (2) are met, it is a permitted use to make a copy of a literary or an artistic work.

(2) The conditions are —

(a) the work is part of a public register;

(b) if the register is maintained by the Government — the copy is made by or with the authority of the Government;

(c) if the register is maintained by a public body — the copy is made by or with the authority of the public body;

(d) the copy is limited to factual information of any description in the work; and

(e) the copy is not supplied to the public.

### **Interpretation: what is publicly disclosed material**

**280.**—(1) In this Division, a work or a recording of a protected performance is publicly disclosed material if —

(a) it is in the possession, custody or control of the Government or a public body;

(b) it is supplied, communicated or otherwise disclosed to the public by or with the authority of the Government or public body; and

(c) the supply, communication or disclosure is required or permitted by law (other than this Act).

(2) For the purposes of subsection (1)(b) and without otherwise affecting the meaning of “public” in this Act, public includes a segment of the public.

### **Copying or communicating publicly disclosed material**

**281.**—(1) If the conditions in subsection (2) are met, it is a permitted use to — 5

(a) make a copy of any of the following material:

(i) a work;

(ii) a recording of a protected performance; or

(b) communicate the material to the public. 10

(2) The conditions are —

(a) the material —

(i) is already publicly disclosed material; or

(ii) becomes publicly disclosed material by virtue of a copy of the material being supplied as part of, or incidentally to, the act of making or communicating the copy; 15

(b) if the material is in the possession, custody or control of the Government — the copy or communication is made by or with the authority of the Government; 20

(c) if the material is in the possession, custody or control of a public body — the copy or communication is made by or with the authority of the public body; and

(d) the copy or communication is made —

(i) to facilitate the more convenient viewing or hearing of the material; or 25

(ii) for the purpose of supplying, communicating or disclosing the material as required or permitted by the law mentioned in section 280(1)(c).

(3) Where —

(a) an act is a permitted use of any material under this section;  
and

(b) copies of the material are supplied to the public as part of,  
or incidentally to, that act,

the supply of those copies —

(c) is not to be treated, for the purposes of this Act, as  
publishing the material (or any work or recording included  
in the material); and

(d) must be ignored in determining the duration of any  
copyright (or the included work).

### **Copying literary or artistic works that are publicly disclosed material**

**282.**—(1) If the conditions in subsection (2) are met, it is a  
permitted use to make a copy of a literary or an artistic work.

(2) The conditions are —

(a) the work is publicly disclosed material;

(b) if the work is in the possession, custody or control of the  
Government — the copy is made by or with the authority of  
the Government;

(c) if the work is in the possession, custody or control of a  
public body — the copy is made by or with the authority of  
the public body;

(d) the copy is limited to factual information of any description  
in the work; and

(e) the copy is not supplied to the public.

### **Data sharing within public sector**

**283.**—(1) If the conditions in subsection (2) are met, it is a  
permitted use to —



- (a) make a copy of any of the following material:
    - (i) a work;
    - (ii) a recording of a protected performance; or
  - (b) communicate the material.
- (2) The conditions are — 5
- (a) the material is in the possession, custody or control of the Government or a public body;
  - (b) the copy or communication is made by a public body for the purpose of complying with a data sharing direction; and
  - (c) copies of the material are not supplied, communicated or otherwise disclosed to any person otherwise than for the purpose of complying with the direction. 10
- (3) For the purposes of this Act, the supply of copies of any material in circumstances to which this section applies —
- (a) is not to be treated as publishing the material (or any work or recording included in the material); and 15
  - (b) must be ignored in determining the duration of any copyright in the material (or the included work).
- (4) In this section, “data sharing direction” has the meaning given by section 2(1) of the Public Sector Governance Act 2018. 20

*Division 16 — Acts for service of Government*

**Interpretation: what is a public act**

**284.**—(1) In this Division, “public act” means any act that is —

- (a) done by —
  - (i) the Government; or 25
  - (ii) a person with the written authority of the Government —
    - (A) whether the authority is given before or after the act; and

(B) whether or not the person also has the licence of the relevant rights owner to do the act; and

(b) done for the service of the Government.

(2) For the purposes of subsection (1)(b) —

5 (a) where the Government agrees or arranges with another country to supply goods to that country for its defence, the following acts are taken to be for the service of the Government:

10 (i) any act done in connection with supplying those goods under the agreement or arrangement;

(ii) the sale of any of those goods that are not required under the agreement or arrangement; and

15 (b) copying an authorial work for the teaching purposes of an educational institution of, or under the control of, the Government is not an act done for the service of the Government.

### **Public act is permitted use**

**285.**—(1) A public act in relation to a work or protected performance is a permitted use.

20 (2) As soon as practicable after a public act is done, the Government must —

(a) inform the relevant rights owner; and

(b) give the rights owner any information that the rights owner may reasonably require from time to time.

25 (3) However, subsection (2) does not require the Government to do anything that it considers to be against the public interest.

### **Terms for doing public act**

**286.**—(1) The terms for doing a public act are to be —

30 (a) agreed between the Government and the rights owner (whether before or after the act is done); or

(b) in default of agreement, decided by a Copyright Tribunal.

(2) Unless it is approved by the Minister, an agreement or a licence that fixes the terms on which a person (other than the Government) may do a public act is void to the extent that it purports to apply to any act done after 10 April 1987.

(3) Subsection (2) applies to any agreement or licence made or granted before, on or after 10 April 1987.

### **Public act does not constitute publication**

**287.** A public act —

- (a) is not to be treated, for the purposes of this Act, as publishing a work or a recording of a protected performance; and
- (b) must be ignored in determining the duration of any copyright under this Act.

### **Protection of purchaser in sale in the course of public act**

**288.**—(1) This section applies where, by virtue of section 285, the sale of an article is not a rights infringement.

(2) The purchaser and any person claiming through the purchaser is entitled to deal with the article as if the Government is the rights owner.

### **Modification when exclusive copyright licence in force**

**289.** In this Division (except section 288), “rights owner”, in relation to any copyright that is subject to an exclusive licence, means the exclusive licensee.

## *Division 17 — Judicial proceedings and legal advice*

### **Acts done for judicial proceedings**

**290.**—(1) It is a permitted use of a work or protected performance to do anything for the purposes of —

- (a) a judicial proceeding; or
- (b) reporting a judicial proceeding.

(2) In this section, “judicial proceeding” means a proceeding before any court, tribunal or person having by law power to hear, receive and examine evidence on oath.

### **Acts done for seeking legal advice**

5     **291.** It is a permitted use of a work or protected performance to do anything —

(a) for the purpose of seeking professional advice from an advocate and solicitor; or

10    (b) for the purpose of, or in the course of, the giving of professional advice by an advocate and solicitor.

### *Division 18 — Miscellaneous*

### **Temporary copies made in the course of communication**

**292.**—(1) If the conditions in subsection (2) are met, it is a permitted use to make a temporary copy of —

15     (a) a work; or

(b) a recording of a protected performance.

(2) The conditions are —

(a) the temporary copy is made incidentally as part of the technical process of making or receiving a communication;

20    (b) the act of making the communication is not a rights infringement;

(c) the communicated copy —

(i) is made in Singapore and is not an infringing copy of the work or performance; and

25    (ii) is made outside Singapore and would not, had it been made in Singapore, be an infringing copy of the work or performance; and

(d) if the work is an adaptation of a literary, dramatic or musical work, the communicated copy —

- (i) is made in Singapore and is not an infringing copy of the adaptation; and
- (ii) is made outside Singapore and would not, had it been made in Singapore, be an infringing copy of the adaptation.

5

(3) This section does not permit any subsequent use of the temporary copy.

### **Temporary copies made in user caching**

**293.**—(1) If the conditions in subsection (2) are met, it is a permitted use to make a temporary and incidental electronic copy of —

10

- (a) a work; or
- (b) a recording of a protected performance.

(2) The conditions are —

- (a) the copy is made from an electronic copy of the work or recording that is made available on a network; and
- (b) the making of the firstmentioned copy is needed for a user of the network (or another network) to see, hear or use the work or recording.

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### **Transfer of electronic copy of material**

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**294.**—(1) This section applies where —

- (a) an electronic copy of any material (called in this section the first copy) is purchased on or after 15 December 1999; and
- (b) the terms of purchase (whether expressed or implied), or any rule of law, allow the purchaser to do any of the following acts in connection with the use of the copy:
  - (i) make a copy of the material;
  - (ii) make an adaptation of the material;
  - (iii) make a copy of an adaptation of the material.

25

(2) If the purchaser transfers the first copy, any act done by the transferee in relation to the copy is a permitted use of a work or protected performance if —

(a) the purchaser is allowed to do the act; and

(b) there is no express term that —

(i) prohibits the purchaser from transferring the copy;

(ii) imposes an obligation on the purchaser or transferee that continues after the transfer;

(iii) prohibits the assignment of any licence in relation to the material;

(iv) terminates any licence in relation to the material if the copy is transferred; or

(v) regulates the terms on which the transferee may do the acts that the purchaser is allowed to do.

(3) However, after the transfer, any copy (including the first copy), adaptation or copy of an adaptation that is retained by the purchaser is to be treated as an infringing copy of the work or performance, as the case may be.

(4) Subsections (2) and (3) also apply where the first copy is unusable and a further copy is transferred instead.

(5) Subsections (2), (3) and (4) also apply to a subsequent transfer, and for this purpose a reference to the purchaser in subsections (2) and (3) is to be read as a reference to the subsequent transferor.

### **Reading or recitation of literary or dramatic works**

**295.**—(1) If the conditions in subsection (2) are met, it is a permitted use to —

(a) read or recite, in public, an extract from a literary or dramatic work; or

(b) include, in a communication of a reading or recitation, an extract from a literary or dramatic work.

- (2) The conditions are —
- (a) the work has been published;
  - (b) the extract is of a reasonable length; and
  - (c) the work is sufficiently acknowledged.

### **Religious performances of literary, dramatic or musical works**

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**296.**—(1) If the conditions in subsection (2) are met, it is a permitted use to perform a literary, dramatic or musical work.

- (2) The conditions are —
- (a) the work is of a religious nature; and
  - (b) the performance is in the course of services at a place of worship or other religious assembly.

10

### **Using adaptations of literary, dramatic or musical works**

**297.**—(1) Subject to subsection (2), where an act in relation to a literary, dramatic or musical work is a permitted use of the work under any provision of this Part, the same act in relation to an adaptation of the work is also a permitted use.

15

- (2) For the purposes of subsection (1) —
- (a) if it is a condition of the permitted use that the work must be sufficiently acknowledged, the condition applies to both an act done in relation to the work and an act done in relation to the adaptation; and
  - (b) subject to any prescribed modification, any other condition of the permitted use, so far as it relates to the work, is to be read as a condition relating to the adaptation.

20

#### *Illustration*

25

Reading an extract of an adaptation of a literary work is a permitted use of the work under section 295 if the adaptation has been published, the extract is of a reasonable length, and the work is sufficiently acknowledged.

### **Copying published editions of authorial work in course of permitted use of authorial work**

5 **298.** It is a permitted use of a published edition of an authorial work (or authorial works) to make a copy of the edition in the course of any other permitted use of that work (or any, some or all of those works).

### **Private and domestic use**

**299.**—(1) If the condition in subsection (2) is met, it is a permitted use for a person to —

(a) make a copy of any of the following material:

- 10 (i) a broadcast;  
 (ii) a cable programme;  
 (iii) a recording of a protected performance; or

(b) record a protected performance live.

15 (2) The copy or recording must be for the private and domestic use of the person.

(3) A permitted use under subsection (1)(a) is also a permitted use of a work or protected performance included in the material.

(4) A permitted use under subsection (1)(b) is also a permitted use of a work included in the performance.

20 (5) For the purposes of this section, a copy or recording is not made for private and domestic use if it is made for the purpose of —

- (a) commercial dealing;  
 (b) broadcasting;  
 (c) inclusion in a cable programme; or  
 25 (d) causing the relevant visual images and sounds to be seen or heard (or both) in public.

### **Recording performance, etc., in mistaken belief of authorisation**

30 **300.**—(1) If the condition in subsection (2) is met, it is a permitted use for a person (*X*) to do any of the following acts:



- (a) make a copy of a recording of a protected performance;
- (b) record a protected performance live.

(2) Because of a fraudulent or an innocent misrepresentation made to *X*, *X* believes that the rights owner has authorised *X* to do the act.

*Division 19 — Notation of copies*

5

**When and how should a copy be notated**

**301.**—(1) Where a copy (including a microform copy and an accessible format copy) of a work, or of a recording of a protected performance, is required to be notated according to this section, the notation must —

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(a) in the case of a copy made under Division 4 (persons with print disabilities) —

(i) be in the form of a sound recording of a prescribed message;

(ii) be embodied in the copy when the copy is made; and

15

(iii) be embodied in a way that the message can be heard immediately before the underlying work or performance is heard;

(b) in the case of a copy made under section 227 or 232 (relating to public collections) —

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(i) be made on or attached to the copy at or about the time the copy is made;

(ii) state the institution (or the custodian of a public collection) —

(A) that made the copy; or

25

(B) on whose behalf the copy is made; and

(iii) state the date on which the copy is made; and

(c) in any other case —

(i) be made on the copy at or about the time the copy is made;

30

(ii) state the institution (or the custodian of a public collection) —

(A) that made the copy; or

(B) on whose behalf the copy is made; and

5 (iii) state the date on which the copy is made.

(2) For the purposes of subsection (1) —

(a) a copy is made on behalf of an institution if it is made or caused to be made —

10 (i) by an authorised officer of a library of the institution;  
or

(ii) by or on behalf of the body administering the institution; and

15 (b) a copy is made on behalf of the custodian of a public collection (other than a library of an institution) if it is made or caused to be made by an authorised officer of the custodian.

20 (3) In this section, “microform copy”, in relation to the whole or a part of a work, means a copy of the whole or part of the work produced by miniaturising the graphic symbols of which the work is composed.

### **Presumptions relating to notated copy**

**302.**—(1) In the following proceedings, a copy that is notated in accordance with section 301 is prima facie proof of the notated matters:

25 (a) proceedings for rights infringements;

(b) proceedings for contravening any provision of this Act;

(c) proceedings in a Copyright Tribunal to decide the amount of equitable remuneration for making the copy.

30 (2) For the purpose of subsection (1), unless the contrary is proved, a copy is presumed to be notated at the time required in section 301 if it appears to be otherwise notated in accordance with that section.

## **Making false or misleading notation**

**303.**—(1) A person commits an offence if —

- (a) the person makes a notation that is for, or appears to be for, the purposes of section 301; and
- (b) the person knows or ought reasonably to know that the notation contains any material information that is false or misleading.

(2) A person convicted of an offence under subsection (1) shall be liable on conviction to a fine not exceeding \$2,000.

## PART 6

### REMEDIES FOR AND BORDER ENFORCEMENT MEASURES AGAINST RIGHTS INFRINGEMENTS

#### *Division 1 — Remedies for rights infringements*

### **Interpretation of this Division**

**304.** In this Division —

- “delivery up order” means an order under section 309(2);
- “disposal order” means an order under section 310(1);
- “infringement action” means an action for a rights infringement.

### **Remedies**

**305.**—(1) Subject to the provisions of this Act, the remedies that the Court may grant for a rights infringement include —

- (a) an injunction (which may be subject to terms);
- (b) damages, including additional damages under section 307;
- (c) an account of profits;
- (d) if the claimant so elects, statutory damages in accordance with section 308;
- (e) a delivery up order; and
- (f) a disposal order.

(2) Subject to subsection (3), the remedies in subsection (1)(b), (c) and (d) are mutually exclusive.

(3) Where the Court orders damages (with or without additional damages) under subsection (1)(b) in respect of a rights infringement, the Court may also order an account of profits attributable to the infringement, but only insofar as the profits have not been taken into account in computing those damages.

### **No damages for innocent rights infringement**

**306.**—(1) Where a person does an act that constitutes a rights infringement, damages may not be ordered for the infringement if, when doing that act, the person does not know and could not reasonably have known that the act is a rights infringement.

(2) To avoid doubt, subsection (1) does not prevent the Court from ordering any other remedy (including an account of profits) for the infringement.

### **Measure of damages**

**307.** The Court may order additional damages for a rights infringement if it is appropriate in the circumstances, having regard to all relevant matters, including —

- (a) the flagrancy of the infringement; and
- (b) any benefit gained by the defendant because of the infringement.

### **Measure of statutory damages**

**308.**—(1) This section applies where a claimant in an infringement action elects for statutory damages.

- (2) The amount of statutory damages must not exceed —
  - (a) \$10,000 for each work or performance that is the subject of the action;
  - (b) \$200,000 for all the works that are the subject of the action; and

(c) \$200,000 for all the performances that are the subject of the action.

(3) However, subsection (2)(b) and (c) does not apply if the claimant proves that the claimant's actual loss for all the works or performances that are the subject of the action exceeds \$200,000. 5

(4) If separate and independent works, or recordings of protected performances, are assembled into one whole, they are taken to be one work for the purposes of subsection (2).

(5) In deciding the amount of statutory damages to award, the Court must consider all relevant matters, including — 10

(a) the nature and purpose of the act constituting the rights infringement, including whether the act is of a commercial nature or otherwise;

(b) the flagrancy of the rights infringement;

(c) whether the defendant acted in bad faith; 15

(d) any loss that the claimant has suffered or is likely to suffer because of the infringement;

(e) any benefit gained by the defendant because of the infringement;

(f) the conduct of the parties before and during the proceedings; and 20

(g) the need to deter similar infringements.

### **Order to deliver up infringing copies, etc.**

**309.**—(1) This section and sections 310 and 311 apply where —

(a) an infringement action is brought; and 25

(b) any of the following items (called in this section and sections 310 and 311 offending items) is before the Court or in the defendant's possession:

(i) any infringing copy;

(ii) any article that has been used to make infringing copies. 30

(2) The Court may order the offending items to be delivered up to the claimant, but only if —

(a) the Court also makes a disposal order; or

(b) it appears to the Court that there are grounds for making a disposal order.

(3) If the Court orders any offending items to be delivered up to a person under subsection (2), the person must retain the items until the Court decides whether or not to make a disposal order.

### **Order to dispose of infringing copies, etc.**

**310.**—(1) The Court may order the offending items to be —

(a) forfeited to the claimant;

(b) destroyed; or

(c) otherwise dealt with.

(2) Without limiting subsection (1)(c), a disposal order may require offending items to be sold and the proceeds to be divided between interested persons.

(3) In deciding whether to make a disposal order, and the terms of the order, the Court must consider —

(a) whether other remedies would be adequate to compensate the claimant and to protect the claimant's interests; and

(b) the need to ensure that no item is disposed of in a manner that would adversely affect the claimant.

(4) If the Court decides not to make a disposal order after making a delivery up order, the Court —

(a) must order that the offending items be returned to the person who was last in possession of the offending items before they were delivered up; and

(b) may order the defendant in the infringement action to pay just and equitable damages to the claimant.

### **Procedure for disposal order**

**311.**—(1) This section applies to proceedings for a disposal order to be made against offending items.

(2) The Court must give directions to serve notice on any person having an interest in any of the offending items. 5

(3) A person who claims an interest in any of the offending items may appear in the proceedings, even if notice is not served on the person.

(4) If the Court makes a disposal order, any person interested in any of the offending items may appeal against the order, even if the person did not appear in the proceedings for the order. 10

(5) A disposal order does not take effect until —

(a) the period for giving notice of an appeal against the order expires and no notice of appeal has been given; or

(b) if a notice of appeal is given within the period for giving notice of an appeal — the appeal is finally determined or abandoned. 15

### **Remedy for infringement of copyright under section 151**

**312.** Despite any provision to the contrary in this Act, the only remedy for an infringement of copyright under section 151 is an order for the payment of equitable remuneration as determined by a Copyright Tribunal. 20

#### *Division 2 — Remedies against network service providers*

##### *Subdivision (1) — Preliminary*

### **Interpretation of this Division**

**313.** In this Division —

“electronic copy” means —

(a) a work, or a copy of a work, in an electronic form; or

(b) a sound recording, in an electronic form, of a performance; 30

“network connection provider” or “NCP” —

(a) means a person who provides services relating to, or provides connections for, the transmission or routing of data; but

5 (b) does not include any prescribed person or class of persons;

“network services provider” or “NSP” means a person who provides, or operates facilities for, online services or network access; and —

10 (a) includes a network connection provider; but

(b) does not include any prescribed person or class of persons;

15 “primary network”, in relation to a network service provider, refers to a network controlled or operated by or for the network service provider;

“restoration notice” means a restoration notice that complies with the requirements prescribed under section 323;

“rights owner”, in relation to a copyright, includes any exclusive licensee of the copyright;

20 “routing” means directing or choosing the means or routes for the transmission of data;

“take-down notice” means a take-down notice that complies with the requirements prescribed under section 323.

### **Provisions relating to rights infringement not affected**

25 **314.** This Division does not affect what constitutes a rights infringement.



*Subdivision (2) — Restriction of remedies against  
rights infringements in course of  
providing network services*

**Restriction of remedies if conditions met**

**315.**—(1) The purpose of this Subdivision is to restrict the remedies available against a NCP or NSP for rights infringements arising from their activities, but only if certain conditions are met. 5

(2) If a NCP commits a rights infringement to which section 316 (transmission, routing and providing connections) applies and satisfies the conditions for that section — 10

(a) the Court may only grant either or both of the following remedies against the NCP in respect of the rights infringement:

(i) an order requiring the NCP to take reasonable steps to disable access to an online location that is physically situated outside Singapore; 15

(ii) an order requiring the NCP to terminate a specified account; and

(b) to avoid doubt, the Court must not grant any other remedy (including a monetary remedy) against the NCP in respect of the rights infringement. 20

(3) If a NCP commits a rights infringement to which section 317, 318 or 319 (system caching, storage, and locating information) applies and satisfies the conditions for the applicable section —

(a) the Court may only grant one or more of the following remedies against the NSP in respect of the rights infringement: 25

(i) an order requiring the NSP to —

(A) remove an electronic copy (being an infringing copy) from the NSP's primary network; or 30

(B) disable access to an electronic copy (being an infringing copy) on the primary network or another network;

(ii) an order requiring the NSP to terminate a specified account;

(iii) if necessary, some other less burdensome but comparatively effective non-monetary order; and

5 (b) to avoid doubt, the Court must not grant any remedy (including a monetary remedy) against the NSP in respect of the rights infringement.

(4) In deciding whether to make an order under subsection (2)(a) or (3)(a), and what order to make, the Court must consider all relevant  
10 matters, including —

(a) the harm that is or may foreseeably be caused to the claimant;

(b) the burden that the making of the order will place on the NCP or NSP;

15 (c) the technical feasibility of complying with the order;

(d) the effectiveness of the order;

(e) any possible adverse effect on the business or operations of the NCP or NSP; and

20 (f) whether some other comparably effective order would be less burdensome.

(5) In this section, “monetary remedy” means damages, an account of profits or statutory damages.

### **Conditions relating to infringement by transmission, routing or providing connections**

25 **316.**—(1) This section applies where a NCP commits a rights infringement by —

(a) transmitting or routing, or providing connections for, an electronic copy through the NCP’s primary network; or

30 (b) any temporary storage of an electronic copy in the course of doing an act under paragraph (a).

- (2) The conditions for this section are —
- (a) in case of the transmission of an electronic copy — the transmission is not initiated by or at the direction of the NCP;
  - (b) the act constituting the rights infringement is carried out through an automatic technical process and the NCP does not select the electronic copy;
  - (c) the NCP does not select the recipients of the electronic copy except as an automatic response to a request by another person;
  - (d) the NCP does not substantively modify the content of the electronic copy (apart from any modification made as part of a technical process) when the electronic copy is transmitted through the NCP's primary network; and
  - (e) any condition as may be prescribed.

### **Conditions relating to infringement by system caching**

**317.**—(1) This section applies where a NSP commits a rights infringement by making an electronic copy (called in this section the cached copy) —

- (a) on the NSP's primary network;
  - (b) from another electronic copy that is available on a network (called in this section the originating network);
  - (c) through an automatic process;
  - (d) in response to an action by a user of the NSP's primary network; and
  - (e) to facilitate efficient access to the underlying work or protected performance (as the case may be) by that user or other users.
- (2) The conditions for this section are —
- (a) the NSP does not substantively modify the content of the cached copy (apart from any modification made as part of a

technical process) when the cached copy is transmitted to users of the NCP's primary network or another network;

(b) if the NSP is served with a take-down notice that purports to be given by or on behalf of the rights owner of the cached copy — the NSP expeditiously takes reasonable steps to remove or disable access to the cached copy on its primary network; and

(c) any condition as may be prescribed, including conditions relating to —

(i) access to the cached copy by users of the NSP's primary network or of another network;

(ii) refreshing, reloading or updating the cached copy; or

(iii) non-interference with technology used at the originating network to obtain information about the use of any electronic copies on the originating network, being technology that is consistent with industry standards in Singapore.

### **Conditions relating to infringement by storage**

**318.**—(1) This section applies where a NSP commits a rights infringement by storing an electronic copy on its primary network (called in this section the stored copy) at the direction of a user of that network.

(2) The conditions for this section are —

(a) if the NSP has the right and the ability to control any rights infringements in relation to the stored copy — the NSP does not receive any financial benefit that is directly attributable to any of those rights infringements;

(b) if —

(i) the NSP knows that rights infringements have been committed in relation to the stored copy;

(ii) the NSP knows about facts or circumstances that would inevitably lead to the conclusion that rights

infringements have been committed in relation to the stored copy; or

- (iii) the NSP is served with a take-down notice that purports to be given by or on behalf of the rights owner of the stored copy,

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the NSP expeditiously takes reasonable steps to remove or disable access to the stored copy;

(c) the NSP has —

- (i) designated a representative to receive take-down notices under paragraph (b)(iii); and
- (ii) published, in the prescribed manner, the prescribed information about the designated representative; and

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(d) any condition as may be prescribed.

(3) In deciding whether a financial benefit is directly attributable to a rights infringement for the purposes of subsection (2)(a), all relevant matters must be considered, including —

15

- (a) industry practice in relation to the charging for services by NSPs; and
- (b) whether the financial benefit is greater than the benefit that would usually result from charging in accordance with accepted industry practices.

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(4) In deciding whether a NSP knows about the matters in subsection (2)(b)(i) or (ii), the following notices must be ignored:

- (a) a notice that purports to be given by or on behalf of the rights owner of the stored copy (other than a take-down notice under subsection (2)(b)(iii));
- (b) a notice by the rights owner of the stored copy under section 326(2)(b) (intention to apply for access disabling order).

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## Conditions relating to infringement by locating information

**319.**—(1) This section applies where —

- (a) an electronic copy (called in this section the main copy) is made available on an online location on a network (called in this section the originating network);
- (b) the NSP commits a rights infringement by referring or linking a user of any network to the online location; and
- (c) the referring or linking is done by using —
  - (i) an information location tool (for example, a hyperlink or directory); or
  - (ii) an information location service (for example, a search engine).

(2) The conditions for this section are —

- (a) if the NSP has the right and the ability to control any rights infringement in relation to the main copy — the NSP does not receive any financial benefit that is directly attributable to any of those rights infringements;
- (b) if —
  - (i) the NSP knows that rights infringements have been committed in relation to the main copy;
  - (ii) the NSP knows about facts or circumstances that would inevitably lead to the conclusion that rights infringements have been committed in relation to the main copy; or
  - (iii) the NSP is served with a take-down notice that purports to be given by or on behalf of the rights owner of the main copy,

the NSP expeditiously takes reasonable steps to remove or disable access to —

- (iv) the main copy; and
- (v) any further electronic copies made from the main copy and made available on the NSP's primary

network, but only if the NSP knows about those further copies;

(c) the NSP has —

- (i) designated a representative to receive take-down notices under paragraph (b)(iii); and
- (ii) published, in the prescribed manner, the prescribed information about the designated representative; and

(d) any condition as may be prescribed.

(3) In deciding whether a financial benefit is directly attributable to a rights infringement for the purposes of subsection (2)(a), all relevant matters must be considered, including —

- (a) industry practice in relation to the charging for services by NSPs; and
- (b) whether the financial benefit is greater than the benefit that would usually result from charging in accordance with accepted industry practices.

(4) In deciding whether a NSP knows about the matters in subsection (2)(b)(i) or (ii), the following notices must be ignored:

- (a) a notice that purports to be given by or on behalf of the rights owner of the main copy (other than a take-down notice under subsection (2)(b)(iii));
- (b) a notice by the rights owner of the main copy under section 326(2)(b) (intention to apply for access disabling order).

**Conditions do not require monitoring of network services, etc.**

**320.**—(1) The application of sections 315, 316, 317, 318 and 319 does not depend on —

- (a) a NSP monitoring its service or affirmatively seeking facts indicating a rights infringement, except to the extent consistent with any standard technical measure; or

(b) a NSP taking any action to gain access to, remove or disable access to any electronic copy in any case where the action is prohibited by law.

5 (2) In this section, “standard technical measure” means any technical measure accepted in Singapore that —

(a) is used to identify or protect copyright works, protected performances, or recordings of protected performances;

(b) has been developed through an open, voluntary process by a broad consensus of rights owners and NSPs;

10 (c) is available to any person on reasonable and non-discriminatory terms; and

(d) does not impose substantial costs on NSPs or substantial burdens on their primary networks.

### **Evidence of compliance with conditions**

15 **321.**—(1) In proceedings relating to this Subdivision, a NSP may produce evidence —

(a) that is prescribed; and

(b) that suggests that the NSP complied with any condition mentioned in section 316, 317, 318 or 319.

20 (2) If a NSP produces the evidence mentioned in subsection (1), the NSP is presumed, unless the contrary is proved, to have complied with the relevant condition.

### **Protection against liability for removing or disabling access to electronic copy under section 317, 318 or 319**

25 **322.**—(1) If subsection (2), (3) or (4) applies, a NSP is not, despite any contrary written law or rule of law, liable under any rule of law for acting to —

(a) remove an electronic copy from its primary network; or

30 (b) disable access to an electronic copy on its primary network or another network.



- (2) This subsection applies if —
- (a) the NSP acted —
    - (i) in good faith; and
    - (ii) in reliance on a take-down notice under section 317(2)(b) (system caching); and 5
  - (b) any prescribed condition is met.
- (3) This subsection applies if —
- (a) the NSP acted —
    - (i) in good faith; and
    - (ii) in reliance on a take-down notice served by a person (X) under section 318(2)(b)(iii) or 319(2)(b)(iii) (storage or locating information); 10
  - (b) the NSP expeditiously takes reasonable steps to —
    - (i) notify the person (Y) who made the electronic copy available on the relevant network of the removal or disabling; and 15
    - (ii) provide Y with a copy of the take-down notice;
  - (c) the NSP takes the following steps if the NSP is served with a restoration notice within the prescribed time by a person purporting to be or to be acting on behalf of Y: 20
    - (i) subject to any written law on privacy or data protection, the NSP expeditiously provides a copy of the restoration notice to X;
    - (ii) the NSP expeditiously notifies X, stating that the NSP will take reasonable steps to restore the electronic copy or access to the electronic copy, but only if — 25
      - (A) the restoration is technically and practically feasible; and
      - (B) within 10 working days after the notification — 30

(BA) no proceedings are brought by or on behalf of the rights owner of the electronic copy to prevent the restoration; or

5 (BB) the NSP is not informed in writing of the proceedings;

(d) the NSP takes reasonable steps to restore the electronic copy, or to restore access to the electronic copy, if the conditions in paragraph (c)(ii) are met;

10 (e) the steps mentioned in paragraph (d) are taken (if they have to be taken) not less than 10 and not more than 14 working days after the date of the notification in paragraph (c)(ii); and

(f) any prescribed condition is met.

15 (4) This subsection applies if —

(a) the NSP acted —

(i) in good faith; and

20 (ii) in reliance on the knowledge mentioned in section 318(2)(b)(i) or (ii) or 319(2)(b)(i) or (ii) (storage or locating information);

(b) the NSP expeditiously takes reasonable steps to notify the person (*Y*) who made the electronic copy available on the relevant network of the removal or disabling;

25 (c) the NSP takes reasonable steps to restore the electronic copy or access to the electronic copy, but only if —

(i) the NSP is served with a restoration notice within the prescribed time by a person purporting to be or to be acting on behalf of *Y*;

30 (ii) within 10 working days after the date on which the restoration notice is served on the NSP —

(A) no proceedings are brought by or on behalf of the rights owner of the electronic copy to prevent the restoration; or

(B) the NSP is not informed in writing of the proceedings; and

(iii) the restoration is technically and practically feasible;

(d) the steps mentioned in paragraph (c) are taken (if they have to be taken) not less than 10 and not more than 14 working days after the date on which the restoration notice is served on the NSP; and

(e) any prescribed condition is met.

(5) Subsections (1), (2), (3) and (4) apply whether or not it is ultimately decided that the NSP committed a rights infringement mentioned in section 317(1), 318(1) or 319(1).

(6) Despite anything to the contrary in any written law or rule of law, a NSP is not liable under any rule of law if —

(a) the NSP acts in good faith to —

(i) restore an electronic copy to the NSP's primary network; or

(ii) restore access to an electronic copy on any network; and

(b) the restoration was done in reliance on a restoration notice under subsection (3)(c) or (4)(c)(i).

(7) A NSP must not be treated as authorising an act that is a rights infringement just because one (but not more) of the following circumstances applies:

(a) the NSP provides a facility that is used by another person to do that act;

(b) the NSP is served with a take-down notice under section 317(2)(b), 318(2)(b)(iii) or 319(2)(b)(iii) (system caching, storage or locating information), or a notice under section 326(2)(b) (intention to apply for access disabling order), in respect of that act;

(c) the NSP has the knowledge mentioned in section 318(2)(b)(i) or (ii) or 319(2)(b)(i) or (ii) (storage or locating information) in respect of that act.

### **Requirements relating to take-down or restoration notices, etc.**

**323.** A take-down notice under section 317(2)(b), 318(2)(b)(iii) or 319(2)(b)(iii) or a restoration notice under section 322(3)(c) or (4)(c)(i) must —

- 5           (a) be served in the prescribed manner;
- (b) be in or substantially in the prescribed form; and
- (c) state the prescribed matters.

### **Making false statements in take-down or restoration notice**

**324.—**(1) In making a take-down notice under section 317(2)(b),  
10 318(2)(b)(iii) or 319(2)(b)(iii) or a restoration notice under  
section 322(3)(c) or (4)(c)(i), a person must not make a false  
statement (whether in or outside Singapore) that —

- (a) the person knows is false or does not believe is true; and
- (b) touches a point material to the object of the notice.

15           (2) A person who contravenes subsection (1) —

- (a) shall be guilty of an offence and shall be liable on  
conviction to a fine not exceeding \$10,000 or to  
imprisonment for a term not exceeding 2 years or to  
both; and
- 20           (b) shall be liable in damages to any person who suffers any  
loss or damage as a result of making that notice, but only to  
the extent that the loss or damage is reasonably foreseeable  
as a likely result of making that notice.

25           (3) If a person makes a statement outside Singapore in  
contravention of subsection (1), the person may be dealt with  
under subsection (2)(a) as if the statement were made in Singapore.

30           (4) Regulations may prescribe how a person may verify statements  
made in the notices mentioned in subsection (1), and the  
consequences of performing or not performing the prescribed  
verification.

*Subdivision (3) — Disabling access to  
flagrantly infringing online locations*

**Access disabling order**

**325.**—(1) The General Division of the High Court may, on application, order a NCP to take reasonable steps to disable access to an online location (called in this Subdivision an access disabling order) if —

- (a) the online location is a flagrantly infringing online location;
- (b) the online location has been or is being used to commit rights infringements in relation to copyright works or protected performances of which the applicant is the rights owner; and
- (c) the NCP's services have been or are being used to access the online location.

(2) In deciding whether to make an access disabling order, and the terms of the order, the General Division of the High Court must consider all relevant matters, including —

- (a) the harm that is or may foreseeably be caused to the rights owner;
- (b) the burden that the making of the order will place on the NCP;
- (c) the technical feasibility of complying with the order;
- (d) the effectiveness of the order;
- (e) any possible adverse effect on the business or operations of the NCP; and
- (f) whether some other comparably effective order would be less burdensome.

**Procedure for application**

**326.**—(1) This section applies to an application by a rights owner for an access disabling order against a NCP in relation to an online location.

(2) Subject to subsection (5), the rights owner must do the following before making the application:

(a) give notice to the owner of the online location that —

(i) the online location has been or is being used to commit or facilitate rights infringements against the rights owner; and

(ii) if the owner of the online location does not stop the online location from being used in that way within the prescribed time, the rights owner will apply for an access disabling order;

(b) give notice to the NCP that the rights owner intends to proceed to apply for an access disabling order against the NCP, and to do so either —

(i) after the end of the prescribed time mentioned in paragraph (a)(ii); or

(ii) after reasonable efforts have been made to give notice under paragraph (a).

(3) The application must be served on the NCP.

(4) Subject to subsection (5), notice of the application must be given to the owner of the online location.

(5) At the hearing of the application, the General Division of the High Court may dispense with the requirement to give notice under subsection (2)(a) or (4) if —

(a) the rights owner is unable to give notice (whether because the identity or address of the owner of the online location cannot be ascertained or for any other reason); and

(b) the rights owner has made reasonable efforts to give notice.

(6) The owner of the online location has —

(a) the right to be heard in the application; and

(b) the same right of appeal as any party to the application.

(7) Regulations may prescribe —

(a) in relation to the notices mentioned in subsection (2)(a) and (b) —

(i) how a notice must be served;

(ii) the form of a notice;

5

(iii) the information to be stated in a notice; and

(iv) the manner of verifying statements in a notice; and

(b) what constitutes reasonable efforts for the purposes of subsection (2)(b)(ii).

### **Variation and revocation of order**

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**327.**—(1) The General Division of the High Court may vary an access disabling order if —

(a) there is a material change of circumstances; or

(b) it is otherwise appropriate to do so.

(2) The General Division of the High Court may revoke an access disabling order if —

15

(a) there is further evidence to show that the order should not have been made;

(b) the online location that is the subject of the order ceases to be a flagrantly infringing online location; or

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(c) it is otherwise appropriate to do so.

(3) An application to vary or revoke an access disabling order may be made by —

(a) a party to the order; or

(b) the owner of the online location that is the subject of the order.

25

### **Application of presumptions**

**328.** The presumptions in Subdivision (4) of Division 9 of Part 3 and section 181 apply in an application for an access disabling order.

*Division 3 — Border enforcement measures  
against infringing goods*

*Subdivision (1) — Preliminary*

**Interpretation of this Division**

5     **329.** In this Division —

“customs officer” —

(a) means an officer of customs as defined in section 3(1) of the Customs Act; and

(b) includes —

10                   (i) a person appointed under section 366(1); and

(ii) a senior customs officer;

“dealer”, in relation to seized goods —

(a) means the importer or intending exporter of the seized goods, as the case may be; and

15                   (b) where the seizure was made under section 336, includes the consignee of the seized goods;

“Director-General” means the Director-General of Customs appointed under section 4(1) of the Customs Act;

20     “goods in transit” means imported goods (whether or not landed or transhipped within Singapore) that are to be carried to another country either by the same or another conveyance;

“infringement action” has the meaning given by section 331;

“infringing goods” has the meaning given by section 330;

25     “request to continue detention” means a request to continue detention under section 338;

“request to seize” means a request to seize under section 332;

“rights owner”, in relation to goods that are or incorporate (or are suspected to be or incorporate) a copyright work, includes any exclusive licensee of the copyright;

30     “seized goods” means goods seized under Subdivision (2) or (3);



“senior customs officer” —

- (a) means a senior officer of customs as defined in section 3(1) of the Customs Act; and
- (b) includes a person appointed under section 366(2).

**Interpretation: what are infringing goods**

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**330.** In this Division, “infringing goods” means —

- (a) goods that are or incorporate infringing copies of any of the following works:
  - (i) an authorial work;
  - (ii) a published edition of an authorial work;
  - (iii) a sound recording;
  - (iv) a film;
  - (v) a broadcast; or
- (b) goods that are or incorporate infringing copies of a protected performance.

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**Infringement actions to which this Division applies**

**331.** In this Division, “infringement action”, in relation to seized goods, means an action —

- (a) for a rights infringement constituted by the importation or making of the seized goods; and
- (b) brought by any person who is entitled to bring the action.

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*Subdivision (2) — Seizure on request*

**Request to seize**

**332.—(1)** A person may request the Director-General to seize goods if —

25

- (a) the person suspects that the goods are infringing goods of which the person is —
  - (i) a rights owner; or

(ii) a copyright licensee with the power to make a request under this section; and

(b) the goods are not goods in transit.

(2) A request must —

5 (a) be served on the Director-General in the prescribed manner and at the prescribed times;

(b) be in the form specified by the Director-General;

(c) state the capacity in which the requestor is making the request;

10 (d) state that infringing goods are expected to either be imported or exported;

(e) provide enough information to —

(i) identify the goods in question;

15 (ii) enable the Director-General to ascertain where and when the goods are expected to be imported or exported; and

(iii) satisfy the Director-General that the goods are infringing goods;

20 (f) provide any information or evidence that is prescribed or required by the Director-General;

(g) be accompanied by the prescribed fee; and

(h) be accompanied by the sum of money or the security required under section 349.

25 (3) Regulations may prescribe further requirements in relation to a request to seize.

### **Duration of request**

**333.**—(1) A request to seize is in force until it is revoked or expires under this section.

30 (2) A request may be revoked at any time by a written notice given to the Director-General by —

- (a) the requestor; or
  - (b) any person who becomes the rights owner after the requestor.
- (3) A request expires on the earlier of the following:
- (a) 60 days after the request is served on the Director-General; 5
  - (b) when the goods in question cease to be infringing goods because the copyright in them, or the protection period of the performance, expires.

### **Seizure on request**

**334.** A customs officer may seize goods (whether or not they are infringing goods) if — 10

- (a) a request to seize is made in respect of the goods;
- (b) the goods are imported or proposed to be exported;
- (c) the request is made in accordance with section 332;
- (d) the request is in force; 15
- (e) the requestor has deposited any sum of money, or gave any security, required under section 349; and
- (f) the goods are not goods in transit.

### **Notice to bring action after seizure**

**335.—**(1) After goods have been seized under section 334, the Director-General must give written notice to the requestor and the dealer. 20

- (2) The notice must —
- (a) identify the seized goods;
  - (b) state that the goods have been seized; 25
  - (c) state the recipient's rights under section 351 (inspection of seized goods and removal of sample); and

(d) state that the goods will be released to the dealer unless —

(i) an infringement action is brought in relation to the goods within the prescribed time after the date specified in the notice; and

(ii) the requestor informs the Director-General of the action within that time.

(3) The date mentioned in subsection (2)(d) must not be earlier than the date on which the notice is given.

(4) The notice may be given personally, by post or (if the recipient gives prior consent) by email.

*Subdivision (3) — Seizure without request*

**Inspection and seizure without request**

**336.**—(1) A customs officer may examine any goods (including goods in transit) that the officer reasonably suspects to be infringing goods.

(2) Subject to subsection (3), a customs officer may seize goods that the officer reasonably suspects are —

(a) infringing goods; and

(b) imported or to be exported.

(3) Subsection (2) does not apply to goods in transit, unless they are consigned to a person with a commercial or physical presence in Singapore.

**Notice of seizure**

**337.**—(1) After goods have been seized under section 336, the Director-General must give written notice to —

(a) any person whom the Director-General considers to be a rights owner of the goods; and

(b) the dealer.

(2) The notice must —

(a) identify the seized goods;

- (b) state that the goods have been seized;
- (c) state the recipient's rights under section 351 (inspection of seized goods and removal of sample); and
- (d) state that the seized goods will be released to the dealer unless a request to continue detention is made in accordance with section 338.

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(3) The notice may be given personally, by post or (if the recipient gives prior consent) by email.

### **Request to continue detention**

**338.**—(1) A person may request the Director-General to continue to detain goods seized under section 336 if the person suspects that the goods are infringing goods of which the person is the rights owner.

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(2) A request must —

- (a) be made within the prescribed time after the date of the notice of seizure in section 337;
- (b) be served on the Director-General in the prescribed manner and at the prescribed times;
- (c) be in the form specified by the Director-General;
- (d) state that the requestor intends to bring an infringement action in relation to the seized goods;
- (e) provide any information or evidence that is prescribed or required by the Director-General;
- (f) be accompanied by the prescribed fee; and
- (g) be accompanied by the sum of money or the security required by section 349, unless —
  - (i) the required sum had earlier been deposited and has not been forfeited or returned; or
  - (ii) the required security had earlier been given and remains effective.

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(3) Regulations may prescribe further requirements in relation to a request to continue detention.

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### **Release of seized goods if request not made**

**339.** If a request to continue detention in respect of goods seized under section 336 is not made in accordance with section 338, the Director-General must release the goods.

### 5 **Notice to bring action if request made**

**340.—(1)** If a request to continue detention in respect of goods seized under section 336 is made in accordance with section 338, the Director-General must give a written notice to the requestor and the dealer.

10 (2) The notice must state that the goods will be released to the dealer unless —

(a) an infringement action is brought in relation to the goods within the prescribed time after the date specified in the notice; and

15 (b) the requestor informs the Director-General of the action within that time.

(3) The date mentioned in subsection (2)(a) must not be earlier than the date on which the notice is given.

20 (4) The notice may be given personally, by post or (if the recipient gives prior consent) by email.

#### *Subdivision (4) — Infringement action after seizure*

### **Interpretation of this Subdivision**

**341.** In this Subdivision —

25 “claim period” means the time within which an infringement action must be brought under section 342;

“notice to bring action” —

(a) in relation to goods seized under Subdivision (2) — means the notice under section 335; and

30 (b) in relation to goods seized under Subdivision (3) — means the notice under section 340;

“requestor” —

- (a) in relation to goods seized under Subdivision (2) — means the person who made the request to seize; and
- (b) in relation to goods seized under Subdivision (3) — means the person who made the request to continue detention. 5

**Time for requestor to bring action**

**342.**—(1) Subject to this section, where goods are seized under Subdivision (2) or (3), an infringement action in relation to the seized goods must be brought (whether by the requestor or any other entitled person) within the time specified in the notice to bring action. 10

(2) The requestor or any other person entitled to bring an infringement action in relation to the seized goods may apply to the Director-General for an extension of time, and the Director-General may grant the extension if the Director-General is satisfied that it is reasonable. 15

(3) An extension of time —

- (a) starts on the expiry of the time specified in the notice to bring action; and
- (b) must be for the prescribed period. 20

(4) An application must be made —

- (a) in writing; and
- (b) before the expiry of the time specified in the notice to bring action.

(5) The Director-General must decide on an application within 2 working days after the application is made. 25

(6) However, a decision may not be made on an application after the expiry of the period specified in the notice to bring action.

### **Failure to bring action — release of seized goods**

**343.**—(1) This section applies if —

(a) no infringement action in relation to the seized goods is brought within the claim period; or

(b) the Director-General is not informed in writing of the action within the claim period.

(2) The Director-General must release the seized goods to the dealer unless —

(a) the Government or any public body is required or permitted by any other law to retain the seized goods; or

(b) the seized goods are forfeited to the Government under section 355.

### **Failure to bring action — compensation for seizure**

**344.**—(1) If no infringement action is brought in relation to the seized goods within the claim period, a person aggrieved by the seizure may apply to the Court for an order of compensation against the requestor.

(2) The Court may order compensation if it is satisfied that the aggrieved person has suffered loss or damage because of the seizure.

### **Infringement action — orders in relation to seized goods**

**345.**—(1) This section applies if —

(a) an infringement action is brought in relation to the seized goods; and

(b) the seized goods are not forfeited to the Government under section 355 or released when the action is brought.

(2) The Court may, in addition to granting any other remedy —

(a) at any time but subject to subsection (3), order that the seized goods be released to the dealer, either with or without conditions;

(b) order that the seized goods must not be released to the dealer before the end of a specified period; or



(c) order that the seized goods be forfeited to the Government.

(3) An order may not be made under subsection (2)(a) if the Government or any public body is required or permitted under any law to retain control of the seized goods.

(4) The Director-General must comply with any order made under subsection (2). 5

(5) If an order is made under subsection (2)(c), the seized goods must be disposed of —

(a) in any prescribed manner; or

(b) if no manner of disposal is prescribed, as the Director-General directs. 10

(6) If no order is made under subsection (2) in relation to the seized goods, the Director-General is not obliged to release the seized goods to the dealer if the Government or any public body is required or permitted under any law to retain control of the seized goods. 15

**Infringement action — release of seized goods if no contrary order made**

**346.**—(1) This section applies if —

(a) an infringement action is brought in relation to the seized goods; 20

(b) the seized goods have not been forfeited to the Government under section 355 or released when the action is brought; and

(c) on the 22nd day after the day on which the action is brought, there is no Court order that prevents the release of the seized goods. 25

(2) The Director-General must release the seized goods to the dealer, unless the Government or any public body is required or permitted by any law to retain control of the seized goods.

**Infringement action — compensation if action dismissed, etc.**

**347.**—(1) This section applies if —

- (a) an infringement action is brought in relation to the seized goods;
- 5 (b) the action is dismissed or discontinued, or the Court decides that the importation or making of the seized goods is not a rights infringement; and
- (c) the Court is satisfied that the defendant has suffered loss and damage because of the seizure.

10 (2) The Court may order the requestor to pay compensation to the defendant.

**Infringement action — further provisions**

**348.**—(1) If an infringement action is brought in relation to seized goods, the Court may, on the application of a person having sufficient  
15 interest in the seized goods, allow the person to be joined as a defendant.

(2) A customs officer has the right to be heard in an infringement action relating to seized goods.

*Subdivision (5) — Supplementary provisions on seizure***20 Security for request to seize or continue detention**

**349.**—(1) A person who makes a request to seize or a request to continue detention must —

- 25 (a) deposit with the Director-General a sum of money that, in the Director-General's opinion, is enough for the purposes in subsection (2); or
- (b) give security, in a form and for an amount satisfactory to the Director-General, for the purposes in subsection (2).

(2) The purposes are to —

30 (a) reimburse the Government for any liability or reasonable expense that the Government is likely to incur in relation to

the seizure, storage and disposal of the goods in question;  
and

- (b) pay any compensation ordered by the Court under section 344 or 347.

### **Direction for secure storage**

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**350.** The Director-General may direct any of the following persons to take seized goods to a place that the Director-General considers to be secure:

- (a) the person in possession, custody or control of those goods immediately before they were seized; 10
- (b) the person who made the request to seize or the request to continue detention.

### **Inspecting, or removing sample of, seized goods**

**351.**—(1) In this section, “relevant person” means —

- (a) in relation to goods seized under Subdivision (2) — the person who made the request to seize; and 15
- (b) in relation to goods seized under Subdivision (3) — a person who may make a request to continue detention in respect of those goods (whether or not a request is made).

(2) The Director-General may permit the dealer or a relevant person to — 20

- (a) inspect the seized goods; or
- (b) subject to subsection (3), remove a sample of the seized goods for inspection.

(3) Before a person removes a sample of the seized goods for inspection, the person must give a written undertaking to the Director-General that the person will — 25

- (a) return the sample to the Director-General at a specified time; and
- (b) take reasonable care to prevent damage to the sample. 30

(4) If the Director-General permits a relevant person to inspect or remove a sample from the seized goods under this section, the Director-General is not liable to the dealer for any loss and damage suffered by the dealer because of —

- 5           (a) any damage caused to any of the seized goods during the inspection; or
- (b) anything done by the relevant person or any other person to, or in relation to, the sample (including any use made of the sample).

10   **Power of customs officer, etc., to require information after seizure**

**352.**—(1) This section applies where —

- (a) goods are seized under Subdivision (2); or
- 15           (b) goods are seized under Subdivision (3) (whether or not a request to continue detention is made in respect of those goods).

(2) A customs officer may, at any time after the seizure, require a person to provide any information or document at a time and place specified by the officer if —

- 20           (a) the officer considers that the information or document —
- (i) would enable the Director-General to satisfy a request for information under section 353 (whether or not a request has been made);
- (ii) would enable any action to be taken under
- 25                   Subdivision (2) or (3) in respect of future shipments of goods; or
- (iii) is relevant for any statistical or research purpose; and
- (b) the officer has reasonable cause to believe that the person has the information or document.

30   (3) A person commits an offence if —

- (a) the person, without reasonable excuse, fails to comply with a requirement under subsection (2); or

(b) in response to a requirement under subsection (2), knowingly or recklessly provides any information or document that is false or misleading in a material particular.

(4) A person who commits an offence under subsection (3) shall be liable on conviction to a fine not exceeding \$6,000 or to imprisonment for a term not exceeding 6 months or to both. 5

(5) A person is not excused from providing any information or document pursuant to a requirement under subsection (2) just because the information or document might tend to incriminate the person. 10

(6) Any information or document provided by a person (*X*) pursuant to a requirement under subsection (2) is not admissible in any criminal proceedings against *X*, but only if —

(a) *X* claims, before providing the information or document, that the information or document might tend to incriminate *X*; and 15

(b) the proceedings are not for an offence under subsection (3).

(7) Any information or document provided in response to a requirement under subsection (2) must not be published, or communicated or disclosed to any person, unless the publication, communication or disclosure is necessary for any purpose in subsection (2)(a)(i), (ii) and (iii). 20

(8) A person who contravenes subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$6,000 or to imprisonment for a term not exceeding 12 months or to both. 25

### **Requestor may ask for identity, etc., of person connected with seized goods**

**353.**—(1) This section applies where —

(a) goods are seized under Subdivision (2); or 30

(b) goods are seized under Subdivision (3), and a request to continue detention is made in respect of those goods.

(2) The person who made the request to seize or the request to continue detention may apply to the Director-General for the name and contact details of any person connected with the import or proposed export of the seized goods.

5 (3) The Director-General may provide the requested name and contact details if the Director-General is satisfied that the applicant needs the information to bring an infringement action.

(4) Subsection (3) applies despite any duty of confidentiality imposed by the common law that the Director-General (or his or her delegate) is subject to.

10

### Notice of release

**354.**—(1) This section applies in any case where the Director-General is required by any provision of this Division to release seized goods to the dealer.

15 (2) The Director-General must —

(a) give prior written notice of the release to the dealer; and

(b) specify in the notice the period within which the dealer must take custody of the seized goods.

(3) If the dealer fails to take custody of the seized goods within the specified period, the seized goods may be disposed of —

20

(a) in any prescribed manner; or

(b) if no manner of disposal is prescribed, as the Director-General directs.

### Forfeiture by consent

25 **355.**—(1) A dealer may consent to forfeiting seized goods to the Government by giving written notice to the Director-General.

(2) The notice must —

(a) be given before —

(i) any infringement action is brought in relation to the seized goods; and

30

(ii) any written notice under section 356 consenting to the release of the seized goods to the dealer; and

(b) be accompanied by the prescribed written undertakings.

(3) If subsections (1) and (2) are satisfied, the seized goods are forfeited to the Government and must be disposed of — 5

(a) in any prescribed manner; or

(b) if no manner of disposal is prescribed, as the Director-General directs.

### **Release by consent**

**356.**—(1) A person who made a request to seize or a request to continue detention may consent to releasing the seized goods to the dealer by giving written notice to the Director-General. 10

(2) The Director-General must release the seized goods to the dealer unless —

(a) the Government or any public body is required or permitted by any law to retain control of the seized goods; or 15

(b) the Court orders otherwise under section 345.

### **Release for non-compliance with directions, etc.**

**357.**—(1) The Director-General or a customs officer may refuse to seize goods and may release any seized goods if any direction of the Director-General, or any prescribed requirement, is not complied with. 20

(2) Subsection (1) does not require the Director-General to release any seized goods if the Government or any public body is required or permitted under any law to retain control of the goods. 25

### **Unsecured expenses of Director-General**

**358.**—(1) This section applies where —

(a) the Director-General incurs reasonable expenses in taking any action under this Division in relation to seized goods 30

(including taking any action in accordance with a court order); and

(b) the expenses exceed the sum deposited, or the security given, under section 349 by the person or persons who made the request to seize or the request to continue detention in respect of the seized goods.

(2) The excess is a debt due —

(a) to the Government; and

(b) by that person, or by those persons jointly and severally.

*Subdivision (6) — Powers to search for seizable infringing goods*

### **Interpretation of this Subdivision**

**359.** In this Subdivision —

“aircraft”, “conveyance”, “master”, “pilot of an aircraft”, “vehicle” and “vessel” have the meanings given by section 2 of the Regulation of Imports and Exports Act;

“seizable goods” means goods that may be seized under Subdivision (2) or (3).

### **Powers to search vessels, aircrafts and vehicles**

**360.**—(1) A senior customs officer may —

(a) board any conveyance in Singapore; and

(b) rummage and search all parts of the conveyance for seizable goods.

(2) In order to effectively exercise the power under subsection (1), a senior customs officer may do all or any of the following:

(a) order the master of any vessel in Singapore to heave to;

(b) order the master of any vessel or the pilot of any aircraft in Singapore that the vessel or aircraft must not proceed unless permitted by the officer;



- (c) order a person to produce for inspection any documents that —
- (i) ought to be on board any vessel or aircraft; and
  - (ii) relate to any goods on the vessel or aircraft;
- (d) break open and forcibly enter any place or receptacle in any conveyance to which the officer cannot otherwise reasonably obtain access; 5
- (e) order the master of any vessel in Singapore to cause the vessel to proceed to a specified anchorage, wharf or place to which the vessel may lawfully go; 10
- (f) order the master of any vessel in Singapore to move or discharge any cargo or other goods in the vessel;
- (g) order the person in charge of a vehicle —
- (i) to stop and not to proceed until so authorised; or
  - (ii) to bring the vehicle to any police station or examination station; 15
- (h) order that any goods from or placed in any vessel may not be removed unless permitted by the officer;
- (i) order the master of any vessel or the pilot of any aircraft to produce — 20
- (i) a complete manifest of the whole cargo of the vessel or aircraft; and
  - (ii) a complete list of stores carried by that vessel or aircraft;
- (j) take any necessary steps that the officer considers necessary to secure compliance by any vessel or aircraft with an order under this section. 25
- (3) A customs officer (not being a senior customs officer) may —
- (a) exercise the power in subsection (1), but only at the general or specific directions of a senior customs officer; and 30

(b) exercise the powers in subsection (2) but —

(i) not the powers in paragraphs (d) and (j) of that subsection; and

(ii) only in respect of —

5 (A) a vehicle or vessel of 75 tons net tonnage or less; or

(B) a vessel under way if the officer reasonably suspects that the vessel is not in transit through Singapore.

10 (4) A customs officer (not being a senior customs officer) who does any act in purported exercise of any power under this section is presumed, unless the contrary is proved, to have done that act at the general or specific directions of a senior customs officer.

15 (5) A person who fails to comply with an order under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$6,000 or to imprisonment for a term not exceeding 12 months or to both.

### **Examination and search of packages, etc.**

20 **361.**—(1) The powers under subsections (2) and (3) may be exercised in relation to an article if —

(a) the article is being imported or exported, or has recently been imported; and

(b) the officer reasonably suspects that the article is or contains seizable goods.

25 (2) A customs officer may —

(a) examine and search the article;

(b) detain the article until any person in charge of the article opens it for examination and search;

30 (c) perform any process to verify whether the article is or contains seizable goods;

(d) perform any test or analysis on the article; or

(e) mark, lock, seal or otherwise secure the article pending examination or search.

(3) A senior customs officer may forcibly open, or order any person to forcibly open, the article for the purpose of examination or search.

(4) In exercising the power under subsection (3), a senior customs officer must give the person in charge of the article every reasonable facility to be present at the opening, examination and search.

(5) It is an offence for a person (other than a customs officer) to remove, open, break or tamper with any mark, lock, seal or other means that is used to secure an article in exercise of the power in subsection (2)(e).

(6) A person who commits an offence under subsection (5) shall be liable on conviction to a fine not exceeding \$6,000 or to imprisonment for a term not exceeding 6 months or to both.

(7) In this section and section 362, “article” includes a package, a box, a chest and goods.

### **Removal of packages, etc., to police station, etc., for examination and search**

**362.**—(1) For the more convenient exercise of the powers under section 361, a customs officer may —

(a) remove an article to a police station or an examination station; or

(b) order the article to be so removed by the owner of the article, the owner’s agent, or any person who has custody, charge or control of the article.

(2) A person who fails to comply with an order under subsection (1)(b) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$6,000.

(3) If a person fails to comply with an order under subsection (1)(b) in relation to an article —

(a) a customs officer may remove the article under subsection (1)(a); and

- (b) any expense of the removal, as certified by a senior customs officer, may be recovered as a fine from that person or the owner of the article.

### **Search of travellers and baggage**

5     **363.**—(1) This section applies to a person (called in this section a traveller) —

- (a) who is landing, is about to land, or has recently landed, from any vessel or aircraft;
- 10     (b) who is leaving any vessel or aircraft in Singapore (whether to land or for any other purpose); or
- (c) who is entering or has recently entered Singapore by land, sea or air.

(2) A customs officer (not being a senior customs officer) may demand that —

- 15     (a) the traveller permits his or her person and goods to be searched by the officer for any seizable goods; or
- (b) the traveller —
- (i) goes, together with the traveller's goods, to a police station or an examination station; and
- 20     (ii) permits his or her person and goods to be searched there, in the presence and under the supervision of a senior customs officer, for seizable goods.

(3) A senior customs officer may demand that —

- 25     (a) the traveller permits his or her person and goods to be searched by the officer for any seizable goods; or
- (b) the traveller permits his or her person and goods to be searched, in the presence and under the supervision of the officer, for any seizable goods.

30     (4) A woman must not be searched under this section except by a woman and with strict regard to decency.

(5) If a traveller requests to be present when his or her goods are searched, the goods may not be searched unless —

- (a) the traveller is present; or
- (b) the traveller is absent despite being given a reasonable facility to be present.

(6) A traveller who refuses to comply with a demand under this section may be arrested without warrant by the officer making the demand. 5

(7) In this section, “goods” includes baggage.

### **Powers to enter certain premises**

**364.**—(1) For the purpose of exercising any power under section 360, 361, 362 or 363, a customs officer may, without warrant, enter — 10

- (a) any islet, landing place, wharf, dock, railway or quay;
- (b) any premises of a provider of port services or facilities licensed or exempted under the Maritime and Port Authority of Singapore Act; or 15
- (c) any premises of any airport operated under a licence or exemption under the Civil Aviation Authority of Singapore Act.

(2) In this section, “railway” has the meaning given by the Railways Act. 20

### **Obstruction of customs officers**

**365.**—(1) A person commits an offence if he or she —

- (a) refuses any customs officer access to any vessel, aircraft, vehicle or place that the officer is entitled to under this Subdivision; or 25
- (b) obstructs or hinders any customs officer in the exercise of any power conferred on that officer by this Subdivision.

(2) A person who commits an offence under subsection (1) shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 12 months or to both. 30

*Subdivision (7) — Administration of this Division*

**Appointment of persons to exercise powers and duties of customs officers**

5     **366.**—(1) The Minister may appoint any person, or class of persons, to exercise the powers and perform the duties of a customs officer under this Division (including any subsidiary legislation relating to this Division).

10     (2) The Minister may appoint any person, or class of persons, to exercise the powers and perform the duties of a senior customs officer under this Division (including any subsidiary legislation relating to this Division).

(3) An appointment under this section must be made by notification in the *Gazette*.

**Delegation of Director-General's powers**

15     **367.**—(1) Subject to this section, the Director-General may delegate any of his or her powers and duties under this Division (including any subsidiary legislation relating to this Division) to a senior officer of customs as defined in section 3(1) of the Customs Act.

20     (2) A delegation under subsection (1) may be subject to any conditions specified by the Director-General.

(3) The power in subsection (1) may not be delegated.

**Fees**

25     **368.** The Minister charged with the responsibility for customs duties may make regulations to prescribe the fees payable to the Director-General for the administration of this Division, including fees for the following purposes:

- (a) for the escort of a conveyance conveying seized goods;
- 30     (b) for a customs officer to attend the inspection or destruction of seized goods;
- (c) for the attendance of a customs officer in connection with any other act or service under this Division.

## PART 7

ADDITIONAL RIGHTS RELATING TO  
COPYRIGHT WORKS AND PROTECTED PERFORMANCES

*Division 1 — Author’s moral rights*

**Interpretation of this Division**

5

**369.** In this Division —

“moral right” means a right under this Division;

“name” includes initials or a monogram.

**Application**

**370.** The moral rights in this Division apply only —

10

(a) in relation to an authorial work in which copyright subsists;

(b) for the period during which copyright subsists in the work;  
and

(c) in relation to the whole or any substantial part of the work.

**Right to be identified**

15

**371.**—(1) Subject to the provisions of this Division, the author of an authorial work has the moral right to be so identified, and that right is infringed if a person fails to identify the author —

(a) in the circumstances mentioned in section 372; or

(b) in the manner required by section 373.

20

(2) In the case of a work of joint authorship, the right in subsection (1) —

(a) is a right of each joint author to be identified as an author;  
and

25

- (b) is not infringed in relation to a joint author if another joint author is not identified.

*Illustration*

5 *A1* and *A2* are the joint authors of an authorial work. The circumstances in section 372 apply. *A1* is identified in the manner required by section 373; *A2* is not. *A1*'s moral right to be identified is not infringed. *A2*'s moral right to be identified is infringed.

**Right to be identified — when should an author be identified**

10 **372.**—(1) A person must identify the author of a dramatic or literary work (other than a literary work mentioned in subsection (2)) whenever the person —

- (a) publishes the work;
- (b) performs the work in public;
- (c) communicates the work to the public;
- 15 (d) causes to be seen in public a film that includes the work;
- (e) supplies to the public copies of a film that includes the work;
- (f) supplies to the public copies of a sound recording that includes the work; or
- 20 (g) does any of the acts mentioned in paragraphs (a) to (f) in relation to an adaptation of the work.

(2) A person must identify the author of a musical work, or a literary work consisting of words intended to be sung or spoken with music, whenever the person —

- 25 (a) publishes the work;
- (b) causes to be seen in public a film, the sound-track of which includes the work;
- (c) supplies to the public copies of a sound recording that includes the work;
- 30 (d) supplies to the public copies of a film, the sound-track of which includes the work; or



(e) does any of the acts mentioned in paragraphs (a) to (d) in relation to an adaptation of the work.

(3) A person must identify the author of an artistic work whenever the person —

- (a) publishes the work; 5
- (b) exhibits the work in public;
- (c) communicates a visual image of the work to the public;
- (d) causes to be seen in public a film that includes a visual image of the work;
- (e) supplies to the public copies of a film that includes a visual image of the work; or 10
- (f) in the case of the following works, supplies to the public copies of a photograph or graphic representation of the work:
  - (i) a work of architecture in the form of a building or a model of a building; 15
  - (ii) a sculpture;
  - (iii) a work of artistic craftsmanship.

(4) In addition to subsection (3), the author of an artistic work in the form of a building must be identified on the first building that embodies the work. 20

### **Right to be identified — how should an author be identified**

**373.**—(1) Where an author has a moral right to be identified, he or she must be identified in accordance with this section.

(2) The author must be identified — 25

- (a) in the way that the author wishes to be identified (for example, by the author's true name or a pseudonym), but only if —
  - (i) the author has made his or her wishes known, either generally or to the person who is required to identify the author; and 30

- (ii) it is reasonable in the circumstances to identify the author in that way; and
- (b) in any other case, by any reasonable form of identification.

*Illustration*

5 An author may make known his or her wish to be identified in a certain way by identifying himself or herself in that way when making or publishing the authorial work.

(3) Where the joint authors of an authorial work use a group name, each of them is sufficiently identified by using the group name.

10 (4) In every case, the identification must be clear and reasonably prominent.

(5) An identification is reasonably prominent if —

(a) in a case where copies are supplied —

(i) the identification appears in or on each copy; or

15 (ii) if that is not appropriate, the identification is likely to be noticed by a person acquiring a copy;

(b) in the case of a building — the identification is visible to persons entering or approaching the building; and

20 (c) in any other case — the identification is likely to be noticed by a person seeing or hearing the performance, exhibition, showing or communication, as the case may be.

**Right to be identified — exception where author not known**

25 **374.**—(1) Section 371 does not require a person to identify the author of an authorial work if, at or during the material time, the identity of the author —

(a) is not generally known;

(b) is not known to the person; and

(c) could not reasonably be ascertained by the person.

*Illustration*

The identity of an author is known if the author is known by some name other than his or her true name.

- (2) In subsection (1), “material time” — 5
- (a) in relation to section 372(1), (2) and (3), means the time at or during which the relevant act in those provisions is done; and
- (b) in relation to section 372(4), means the time during which the building is constructed. 10

**Right to be identified — exception for certain authorial works**

**375.** Section 371 does not apply in relation to the following authorial works:

- (a) a computer program;
- (b) any authorial work, if — 15
- (i) the work is made by the author in the course of his or her employment; and
- (ii) the author’s employer is the first owner of the copyright in the work;
- (c) any authorial work, if — 20
- (i) the Government is the first owner of the copyright in the work; and
- (ii) the author has not been identified in or on any published copy of the work;
- (d) any prescribed authorial work. 25

**Right to be identified — exception for certain permitted uses**

**376.** Section 371 does not apply —

- (a) where a person does an act that is a permitted use of an authorial work under any of the following provisions:

- (i) section 202 (examination purposes);
  - (ii) section 265 (artistic works in public places);
  - (iii) section 266 (incidental inclusion in film, television broadcast or cable programme);
  - 5 (iv) section 290 (judicial proceedings);
  - (v) Division 14 of Part 5 (artistic works with corresponding designs and industrially applied artistic works);
- (b) where a person does an act in relation to an authorial work that is a fair use for the purpose of reporting news under Division 2 of Part 5; or
- 10 (c) in any prescribed circumstances.

### **Right to be identified — transitional exceptions**

**377.**—(1) The right in section 371 —

- 15 (a) does not apply to an author who died before the appointed day;
- (b) does not, despite section 523, apply to a film that is treated as a dramatic work by that section; and
- (c) is not infringed by anything done or omitted to be done before the appointed day.

(2) In the case of an authorial work made before the appointed day, section 371 does not apply —

- 25 (a) if the author is the first owner of the copyright in the work — to any act that, by virtue of an assignment of that copyright made or a licence granted by the author before the appointed day, does not infringe that copyright; and
  - (b) if another person is the first owner of the copyright in the work — to any act that, by virtue of an assignment of that copyright made or a licence granted by that person, does not infringe that copyright.
- 30

### Right against false identification

**378.**—(1) The author (*A*) of an authorial work has the moral right to not have any other person (*F*) identified as the author of the work, and a person (*X*) infringes that right in the circumstances mentioned in subsections (2), (3) and (4). 5

(2) *X* infringes the right in subsection (1) if —

(a) *X* affixes or inserts *F*'s name in, or on, the work or a copy of the work; and

(b) the affixation or insertion is done in a way that implies that — 10

(i) *F* is the author of the work; or

(ii) the work is an adaptation of a work by *F*.

(3) *X* infringes the right in subsection (1) if —

(a) *X* performs the work in public or communicates the work to the public; 15

(b) the performance or communication is done in a way that implies that —

(i) *F* is the author of the work; or

(ii) the work is an adaptation of a work by *F*; and

(c) *X* knows that the implication in paragraph (b)(i) or (ii) (as the case may be) is false. 20

(4) *X* infringes the right in subsection (1) if —

(a) *F*'s name is affixed or inserted (whether before, on or after the appointed day) in or on a copy of the work;

(b) the affixation or insertion is done in a way that implies that — 25

(i) *F* is the author of the work; or

(ii) the work is an adaptation of a work by *F*;

(c) *X* knows that the implication in paragraph (b)(i) or (ii) (as the case may be) is false; and 30

(d) *X* —

- (i) publishes the copy;
- (ii) deals commercially in the copy; or
- (iii) distributes the copy.

5 (5) For the purposes of subsection (4), “copy”, in relation to a work, includes the work itself.

(6) To avoid doubt, *X* and *F* could be the same person.

(7) In the case of a work of joint authorship, an infringement of the right in subsection (1) is an infringement of each joint author’s right.

10

*Illustration*

*A1* and *A2* are the joint authors of an authorial work. *X* affixes the names of *A1* and *F* on a copy of the work in a way that implies that *A1* and *F* are joint authors of the work. *X* has infringed the rights of both *A1* and *A2* under subsection (1) read with subsection (2).

15

**Right not to be falsely identified as author of copy of artistic work**

**379.**—(1) The author of an artistic work has the moral right not to be identified as the author of a copy of the work that was not made by him or her.

20

(2) A person infringes the right in subsection (1) if —

(a) the person —

- (i) publishes a copy of the work as being made by the author;
- (ii) deals commercially in a copy of the work as being made by the author; or
- (iii) distributes a copy of the work as being made by the author; and

25

(b) the person knows that the copy is not made by the author.

### **Right not to have altered copy represented as unaltered**

**380.**—(1) The author of an authorial work has the moral right not to have an altered copy of the work represented as being unaltered.

(2) A person infringes the right in subsection (1) if —

(a) the person —

(i) publishes an altered copy of the work as being unaltered;

(ii) deals commercially in an altered copy of the work as being unaltered; or

(iii) distributes an altered copy of the work as being unaltered; and

(b) the person knows that —

(i) the copy is an altered copy; and

(ii) the alteration is not made by the author.

(3) In the case of a work of joint authorship —

(a) any infringement of the right in subsection (1) is an infringement of each joint author’s right; and

(b) the reference to the author in subsection (2)(c) is a reference to all the joint authors.

(4) In this section, “copy”, in relation to a work, includes the work itself.

### **Moral rights not infringed by acts, etc., outside Singapore**

**381.** Despite any provision of this Division, the moral rights of an author are not infringed by any act done outside Singapore or any omission in relation to an act done outside Singapore.

### **Consent and formal waiver**

**382.**—(1) Despite any provision of this Division, the moral rights of an author are not infringed by any act or omission to which the author consented (whether in writing or otherwise).

(2) The moral rights of an author may be formally waived by the author.

(3) A formal waiver is valid only if it is —

(a) made in writing; and

(b) signed by the author.

(4) A formal waiver may —

(a) relate to a specific authorial work, to authorial works of a specified description or to authorial works generally;

(b) relate to existing or future authorial works;

(c) relate to some or all moral rights;

(d) be conditional or unconditional; and

(e) be expressed to be revocable.

(5) Subject to any contrary intention in the waiver, a formal waiver in favour of a person who is the owner or prospective owner of the copyright in the authorial work or works to which the waiver relates is presumed to extend to the person's licensees and successors in title.

(6) To avoid doubt, this section does not affect the operation of the general law of contract or estoppel in relation to an informal waiver or any other transaction in relation to moral rights.

### **Action for infringement of moral rights**

**383.** The author of an authorial work may bring an action in the Court against any person who infringes any of the author's moral rights.

### **Limitation of action**

**384.** An action may not be brought in respect of an infringement of an author's moral rights more than 6 years after the infringement takes place.

### **Remedies**

**385.—**(1) The remedies that the Court may grant for an infringement of moral rights include —



- (a) an injunction (which may be subject to terms); and
- (b) damages.

(2) In deciding on the appropriate remedy, the Court must consider all relevant matters, including —

- (a) whether the defendant was aware, or ought reasonably to have been aware, of the author’s moral rights; 5
- (b) the number and categories of people who have seen or heard the work;
- (c) anything done by the defendant to mitigate the effects of the infringement; 10
- (d) in the case of the moral right under section 371 (right to be identified) — the cost or difficulty (if any) of identifying the author;
- (e) the cost or difficulty (if any) of reversing the infringement;
- (f) any practice in the industry in which the work is used that is relevant to the work or the use of the work; and 15
- (g) the damage caused to the author by the infringement, including any loss of income.

### **Moral rights not assignable**

**386.** An author’s moral rights are — 20

- (a) personal to him or her; and
- (b) not assignable.

### **Devolution on death**

**387.**—(1) When an author dies —

- (a) the author’s moral rights devolve to his or her personal legal representative; and 25
- (b) any damages recovered in an action under section 383 by the personal legal representative form part of the author’s estate.

(2) To avoid doubt, any consent or waiver given by an author in relation to the author’s moral rights binds his or her personal legal representative.

### **Other rights not affected**

5     **388.**—(1) Subject to this section, this Division does not affect any right of action or other remedy (whether civil or criminal) in proceedings brought otherwise than by virtue of this Division.

(2) Any damages recovered in an action under section 383 must be considered in assessing damages in any other proceedings arising out of the same transaction (and vice versa).

10

### *Division 2 — Performer’s moral rights*

#### **Interpretation of this Division**

**389.** In this Division —

“moral right” means a right under this Division;

15     “name” includes initials or a monogram.

#### **Application of moral rights**

**390.** The moral rights in this Division apply only —

(a) in relation to a performance that is a protected performance;

20     (b) for the protection period of the performance; and

(c) in relation to the whole or any substantial part of the performance.

#### **Right to be identified**

**391.**—(1) Subject to the provisions of this Division, the performer of a protected performance has the moral right to be so identified, and that right is infringed if a person fails to identify the performer —

25

(a) in the circumstances mentioned in section 392; or

(b) in the manner required by section 393.

(2) In the case of a performance given by 2 or more performers, the right in subsection (1) —

- (a) is a right of each performer to be identified as a performer; and
- (b) is not infringed in relation to a performer if another performer is not identified.

*Illustration*

*P1* and *P2* give a performance. The circumstances in section 392 apply. *P1* is identified in the manner required by section 393; *P2* is not. *P1*'s moral right to be identified is not infringed. *P2*'s moral right to be identified is infringed.

**Right to be identified — when should a performer be identified**

**392.** A person (*X*) must identify the performer of a protected performance —

- (a) if the performance is given in public and produced or put on by *X*;
- (b) if *X* communicates the performance live to the public;
- (c) whenever *X* makes available a recording of the performance to the public (on a network or otherwise) in a way that enables the recording to be accessed by any person on demand; or
- (d) whenever *X* publishes a recording of the performance.

**Right to be identified — how should a performer be identified**

**393.**—(1) Where a performer must be identified under this Division, he or she must be identified in accordance with this section.

(2) The performer must be identified —

- (a) in the way that the performer wishes to be identified (for example, by the performer's true name or by a stage name or pseudonym), but only if —
  - (i) the performer has made his or her wishes known, either generally or to the person who is required to identify the performer; and

(ii) it is reasonable in the circumstances to identify the performer in that way; and

(b) in any other case, by any reasonable form of identification.

5 (3) Where a protected performance is given by performers who use a group name, those performers are sufficiently identified by using the group name.

(4) In every case, the identification must be clear and reasonably prominent.

(5) An identification is reasonably prominent if —

10 (a) in the case of copies of recordings of a performance —

(i) the identification appears in or on each copy; or

(ii) the identification is likely to be noticed by a person acquiring a copy; and

15 (b) in any other case — the identification is likely to be noticed by a person seeing or hearing (as the case may be) the performance or communication.

### **Right to be identified — exception where performer not known**

20 **394.**—(1) Section 391 does not require a person to identify the performer of a performance if, at or during the material time, the identity of the performer —

(a) is not generally known;

(b) is not known to the person; and

(c) could not reasonably be ascertained by the person.

#### *Illustration*

25 The identity of a performer is known if the performer is known by some name other than his or her true name.

(2) In subsection (1), “material time” means the time at or during which the relevant act in section 392 is done.

**Right to be identified — exception for certain performances**

**395.** Section 391 does not apply to the following performances:

- (a) a performance given for the purpose of advertising any goods or services;
- (b) any prescribed performance.

5

**Right to be identified — exception for certain permitted uses**

**396.** Section 391 does not apply —

- (a) where a person does an act that is a permitted use of a performance under any of the following provisions:
  - (i) section 202 (examination purposes);
  - (ii) section 290 (judicial proceedings);
- (b) where a person does an act in relation to a performance that is a fair use of the performance for the purpose of reporting news under Division 2 of Part 5; or
- (c) in any prescribed circumstances.

10

15

**Right to be identified — transitional exception**

**397.** Section 391 does not apply to a performance given before the appointed day.

**Right against false identification**

**398.—**(1) The performer (*P*) of a performance has the moral right not to have any other person (*F*) identified as the performer of the performance, and a person (*X*) infringes that right in the circumstances mentioned in this section.

20

(2) *X* infringes the right in subsection (1) if —

- (a) *X* affixes or inserts *F*'s name in or on a recording of the performance; and
- (b) the affixation or insertion is done in a way that implies that *F* is the performer.

25

(3) *X* infringes the right in subsection (1) if —

(a) *X* makes available a recording of the performance to the public as being a performance by *F*; and

(b) *X* knows that *F* is not the performer.

5 (4) *X* infringes the right in subsection (1) if —

(a) *F*'s name is affixed or inserted (whether before, on or after the appointed day) in or on a recording of the performance;

(b) the affixation or insertion is done in a way that implies *F* is the performer;

10 (c) *X* knows that *F* is not the performer; and

(d) *X* —

(i) publishes the recording;

(ii) deals commercially in the recording; or

(iii) distributes the recording.

15 (5) To avoid doubt, *X* and *F* could be the same person.

(6) In the case of a performance given by 2 or more performers, an infringement of the right in subsection (1) is an infringement of each performer's right.

#### *Illustration*

20 A performance is given by *P1* and *P2*. *X* affixes the names of *P1* and *F* on a recording of the performance in a way that implies that *P1* and *F* are the performers. *X* has infringed the rights of both *P1* and *P2* under subsection (1) read with subsection (2).

### **Right not to have altered recording represented as unaltered**

25 **399.**—(1) The performer of a performance has the moral right not to have an altered recording of the performance represented as being unaltered.

(2) A person infringes the right in subsection (1) if —

(a) the person —

- (i) publishes an altered recording of the performance as being unaltered;
- (ii) deals commercially in an altered recording of the performance as being unaltered; or
- (iii) distributes an altered recording of the performance as being unaltered; and

5

(b) the person knows that —

- (i) the recording is an altered recording; and
- (ii) the alteration is not made by the performer.

10

(3) In the case of a performance given by 2 or more performers, an infringement of the right in subsection (1) is an infringement of each performer's right.

### **Moral rights not infringed by acts, etc., outside Singapore**

15

**400.** Despite any provision of this Division, the moral rights of a performer are not infringed by any act done outside Singapore or any omission in relation to an act done outside Singapore.

### **Consent and formal waiver**

**401.—**(1) Despite any provision of this Division, the moral rights of a performer are not infringed by any act or omission to which the performer consented (whether in writing or otherwise).

20

(2) The moral rights of a performer may be formally waived by the performer.

(3) A formal waiver is valid only if it is —

25

- (a) made in writing; and
- (b) signed by the performer.

(4) A formal waiver may —

- (a) relate to a specific performance, to performances of a specified description or to performances generally;

30

- (b) relate to past or future performances;
- (c) relate to some or all moral rights;
- (d) be conditional or unconditional; and
- (e) be expressed to be revocable.

5 (5) Subject to any contrary intention in the waiver, a formal waiver in favour of a person (*X*) who is the rights owner or prospective rights owner of a performance or performances to which the waiver relates is presumed to extend to persons acting with *X*'s authority and *X*'s successors in title.

10 (6) To avoid doubt, this section does not affect the operation of the general law of contract or estoppel in relation to an informal waiver or any other transaction in relation to moral rights.

### **Action for infringement of moral rights**

15 **402.** The performer of a performance may bring an action in the Court against any person who infringes any of the performer's moral rights.

### **Limitation of action**

20 **403.** An action may not be brought in respect of an infringement of a performer's moral rights more than 6 years after the infringement takes place.

### **Remedies**

**404.—**(1) The remedies that the Court may grant for an infringement of moral rights include —

- (a) an injunction (which may be subject to terms); and
- 25 (b) damages.

(2) In deciding on the appropriate remedy, the Court must consider all relevant matters, including —

- (a) whether the defendant was aware, or ought reasonably to have been aware, of the performer's moral rights;



- (b) the number and categories of people who have seen or heard the performance;
- (c) anything done by the defendant to mitigate the effects of the infringement;
- (d) in the case of the moral right under section 391 (right to be identified) — the cost or difficulty (if any) of identifying the performer; 5
- (e) the cost or difficulty (if any) of reversing the infringement;
- (f) any practice in the industry in which the performance is used that is relevant to the performance or the use of the performance; and 10
- (g) the damage caused to the performer by the infringement, including any loss of income.

### **Moral rights not assignable**

- 405.** A performer's moral rights are — 15
- (a) personal to him or her; and
  - (b) not assignable.

### **Devolution on death**

- 406.**—(1) When a performer dies —
- (a) the performer's moral rights devolve to his or her personal legal representative; and 20
  - (b) any damages recovered in an action under section 402 by the personal legal representative form part of the performer's estate.
- (2) To avoid doubt, any consent or waiver given by a performer in relation to the performer's moral rights binds his or her personal legal representative. 25

### **Other rights not affected**

**407.**—(1) Subject to this section, this Division does not affect any right of action or other remedy (whether civil or criminal) in proceedings brought otherwise than by virtue of this Division.

5 (2) Any damages recovered in an action under section 402 must be considered in assessing damages in any other proceedings arising out of the same transaction (and vice versa).

### *Division 3 — Protection of electronic rights management information*

#### 10 **Interpretation of this Division**

**408.** In this Division —

“protected copy” means —

(a) a copyright work or a copy of the work; or

(b) a recording of a protected performance;

15 “rights owner”, in relation to a copyright, includes any exclusive licensee of the copyright.

#### **Interpretation: what is rights management information**

**409.** In this Division, “rights management information”, in relation to a protected copy —

20 (a) means any of the following:

(i) information that identifies the copyright work or protected performance;

(ii) information that identifies —

25 (A) if the protected copy is an authorial work — the copyright owner or the author;

(B) if the protected copy is a work other than an authorial work — the copyright owner; or

30 (C) if the protected copy is a recording of a protected performance — the rights owner or the performer;

- (iii) information about the terms and conditions of use of the copy;
  - (iv) any numbers or codes that represent the information mentioned in sub-paragraph (i), (ii) or (iii); but
- (b) excludes any information relating to a user of the copy, including the name, account, address, or other contact information, of the user. 5

### **Application**

**410.**—(1) This Division applies where rights management information in an electronic form — 10

- (a) is attached to or embodied in a protected copy; or
- (b) appears in connection with the communication or making available to the public of any protected copy.

(2) This Division does not apply to anything done in relation to a protected copy after the expiry of the relevant copyright or protection period, as the case may be. 15

(3) This Division does not apply to anything done for the service of the Government.

### **Prohibition on removing or altering rights management information** 20

**411.** A person infringes this section if the person —

- (a) knowingly removes or alters any rights management information relating to a protected copy;
- (b) does so without the rights owner's authority; and
- (c) knows or ought reasonably to know that the removal or alteration of the rights management information will induce, enable, facilitate or conceal a rights infringement relating to the protected copy. 25

**Prohibition on dealing with altered rights management information**

**412.** A person infringes this section if the person —

- (a) distributes, or imports for distribution, any rights management information that —
  - (i) relates to a protected copy; and
  - (ii) has been altered without the rights owner’s authority;
- (b) does so without the rights owner’s authority;
- (c) does so knowing that the rights management information has been altered without the rights owner’s authority; and
- (d) knows or ought reasonably to know that doing so will induce, enable, facilitate or conceal a rights infringement relating to the protected copy.

**Prohibition on dealing with protected copies after rights management information altered or removed**

**413.** A person infringes this section if —

- (a) the rights management information relating to protected copies has been removed or altered without the rights owner’s authority;
- (b) the person —
  - (i) distributes those copies;
  - (ii) imports those copies for distribution;
  - (iii) communicates those copies to the public; or
  - (iv) makes those copies available to the public; and
- (c) the person —
  - (i) does so without the rights owner’s authority;
  - (ii) does so knowing that the rights management information has been removed or altered without the rights owner’s authority; and

- (iii) knows or ought reasonably to know that doing so will induce, enable, facilitate or conceal a rights infringement relating to the protected copies.

### **Action for infringement**

**414.** The rights owner of a protected copy may bring an action in the Court against any person who infringes any provision of this Division in relation to the protected copy. 5

### **Limitation of action**

**415.** An action may not be brought in respect of an infringement of any provision of this Division more than 6 years after the infringement takes place. 10

### **Remedies**

**416.—(1)** Subject to this section, the remedies that the Court may grant for an infringement of any provision of this Division include —

- (a) an injunction (which may be subject to terms); 15
- (b) damages;
- (c) an account of profits;
- (d) if the claimant so elects, statutory damages; and
- (e) an order that an offending article in the defendant's possession or before the court be — 20
  - (i) delivered up and forfeited to the rights owner;
  - (ii) destroyed; or
  - (iii) otherwise dealt with.

(2) Subject to subsection (3), the remedies in subsection (1)(b), (c) and (d) are mutually exclusive. 25

(3) Where the Court orders damages (with or without additional damages) under subsection (1)(b) in respect of an infringement of a provision of this Division, the Court may also order an account of profits attributable to the infringement, but only insofar as the profits have not been taken into account in computing those damages. 30

(4) For the purposes of subsection (1)(d) —

(a) a claimant may only be awarded a total of \$20,000 in statutory damages in a single action, even if the action involves 2 or more infringements; and

(b) in deciding the amount of statutory damages to award, the Court must consider all relevant matters, including —

(i) the nature and purpose of the act constituting the infringement, including whether the act is of a commercial nature or otherwise;

(ii) the flagrancy of the infringement;

(iii) whether the defendant acted in bad faith;

(iv) any loss that the claimant has suffered or is likely to suffer because of the infringement;

(v) any benefit gained by the defendant because of the infringement;

(vi) the conduct of the parties before and during the proceedings; and

(vii) the need to deter similar infringements.

(5) In this section, an article is an “offending article” if —

(a) the article was used, or is being used, to carry out an infringement of a provision of this Division; or

(b) an infringement of a provision of this Division was or is being carried out in relation to the article.

### **Offence**

**417.**—(1) Subject to this section, a person commits an offence if the person —

(a) wilfully infringes a provision of this Division; and

(b) does so to obtain a commercial advantage or private financial gain.

(2) Subsection (1) does not apply to any act done by or on behalf of —

- (a) a non-profit library or archive;
- (b) an educational institution;
- (c) an institution aiding persons with print disabilities;
- (d) an institution aiding persons with intellectual disabilities;  
or
- (e) a public and non-commercial broadcasting organisation  
that is prescribed.

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(3) A person who commits an offence under subsection (1) shall be liable on conviction —

- (a) for an infringement of section 411, to a fine not exceeding \$20,000; and
- (b) for an infringement of section 412 or 413, to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both.

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**Power to deal with protected copies, etc., in proceedings under section 417**

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**418.**—(1) This section applies where —

- (a) a person is charged for an offence under section 417 in a court (whether or not the person is convicted); and
- (b) there is before the court or in the person's possession an article that appears to be —
  - (i) a protected copy from which the rights management information has been removed or altered without the rights owner's authority; or
  - (ii) mainly used for removing or altering the rights management information relating to a protected copy.

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(2) The court may order that the article be —

- (a) delivered up and forfeited to the rights owner concerned;
- (b) destroyed; or
- (c) otherwise dealt with.

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### **Powers of entry, search and seizure**

**419.**—(1) Information may be given on oath to a court that there is reasonable cause to suspect that an article or a document —

(a) is located at any premises; and

5 (b) is evidence that an offence under section 417 has been committed.

(2) If information is given under subsection (1), the court may issue a warrant authorising a police officer (either with or without conditions) —

10 (a) to enter and search the premises for articles and documents specified (either specifically or in any general category) in the warrant; and

(b) if any articles or documents so specified are found at the premises — to seize them.

15 (3) In this section and section 420, “document” means anything in which information of any description is recorded.

### **Disposal of seized evidence**

**420.**—(1) This section applies where —

(a) an article or a document is seized under section 419; and

20 (b) either —

(i) no proceedings are brought for an offence under section 417 within 6 months of the seizure; or

25 (ii) in the case of a seized article — proceedings are brought for an offence under section 417, but no order is made under section 418 in respect of the article.

(2) The article or document must be —

(a) returned to the person who was in possession of the article or document when it was seized; or

30 (b) if it is not practicable to so return the article or document — disposed of in accordance with section 108



of the Police Force Act (disposal of lost or unclaimed property deposited with police).

### **Other rights not affected**

**421.** This Division does not affect any provision of this Act providing for —

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- (a) any copyright in a work;
- (b) any other right in relation to a performance or a recording of the performance;
- (c) any limitation on the rights in paragraph (a) or (b); or
- (d) any defence to an action for a rights infringement.

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### *Division 4 — Protection of technological measures*

### **Interpretation of this Division**

**422.** In this Division —

“access control measure” has the meaning given by section 423;

“circumvent” means to avoid, bypass, remove, deactivate, descramble (where the copy is scrambled), decrypt (where the copy is encrypted) or otherwise impair;

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“deal”, except in section 435(2), means —

(a) in relation to a device, product or component — manufacture, import, distribute, offer to the public, provide or otherwise traffic; and

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(b) in relation to a service — offer to the public or provide,

and “dealing” has a corresponding meaning;

“protected copy” means —

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(a) a copyright work or a copy of the work; or

(b) a recording of a protected performance;

“protection measure” has the meaning given by section 423;

“rights owner”, in relation to a copyright, includes any exclusive licensee of the copyright;

“technological measure” has the meaning given by section 423.

**Interpretation: what are technological measures, access control measures and protection measures**

**423.** In this Division —

“access control measure”, in relation to a protected copy —

(a) means any technology, device or component that, in the normal course of its operation, effectively controls access to a protected copy; but

(b) does not include any prescribed technology, device or component;

“protection measure”, in relation to a protected copy —

(a) means any technology, device or component that, in the normal course of its operation, effectively prevents or limits the doing of any act that constitutes a rights infringement; but

(b) does not include any prescribed technology, device or component;

“technological measure” means an access control measure or a protection measure.

**Application**

**424.**—(1) This Division applies in relation to protected copies.

(2) This Division does not apply to anything done in relation to a protected copy after the expiry of the relevant copyright or protection period, as the case may be.

(3) This Division does not prohibit a person from importing or selling a device that does not render effective a technological measure, but only if —

(a) the sole purpose of the measure is to control market segmentation for access to films; and

- (b) the import or sale of the device does not otherwise contravene any written law (including this Act).

### **Prohibition on circumventing access control measure**

**425.**—(1) Subject to the provisions of this Division, a person infringes this section if the person circumvents an access control measure. 5

(2) For the purposes of this Division, a person circumvents an access control measure if —

(a) the access control measure is applied —

- (i) to a protected copy; 10
- (ii) by or with the authority of the rights owner of the protected copy; and
- (iii) in connection with the exercise of the copyright or any right in the performance, as the case may be;

(b) the person does any act that the person knows or ought reasonably to know circumvents the access control measure; and 15

(c) the act is done without the rights owner's authority.

### **Prohibition on dealing in circumventing devices**

**426.**—(1) Subject to the provisions of this Division, a person infringes this section if the person deals (wilfully or otherwise) in a circumventing device. 20

(2) For the purposes of this Division, a person (X) deals in a circumventing device if —

(a) a technological measure is applied — 25

- (i) to a protected copy;
- (ii) by or with the authority of the rights owner of the protected copy; and
- (iii) in connection with the exercise of the copyright or the protection of the performance, as the case may be; 30

- (b) *X* deals in any device, product or component that —
- (i) is promoted, advertised or marketed for the purpose of circumventing the measure;
  - (ii) has only a limited commercially significant purpose or use other than to circumvent the measure; or
  - (iii) is designed or made primarily for the purpose of circumventing the measure; and
- (c) *X* does so without the rights owner's authority.

(3) For the purposes of this Division, a dealing in a circumventing device is wilful if and only if —

- (a) in relation to subsection (2)(b)(i) — the promotion, advertising or marketing is —
- (i) done by *X* personally; or
  - (ii) personally authorised by *X*;

(b) in relation to subsection (2)(b)(ii) — at the time of dealing, *X* knows or ought reasonably to know that the device, product or component has only a limited commercially significant purpose or use other than to circumvent the technological measure; and

(c) in relation to subsection (2)(b)(iii) — at the time of dealing, *X* knows or ought reasonably to know that the device, product or component is designed or made primarily for the purpose of circumventing the technological measure.

### **Prohibition on dealing in circumventing services**

**427.**—(1) Subject to the provisions of this Division, a person infringes this section if the person deals (wilfully or otherwise) in a circumventing service.

(2) For the purposes of this Division, a person (*X*) deals in a circumventing service if —

- (a) a technological measure is applied —
- (i) to a protected copy;

- (ii) by or with the authority of the rights owner of the protected copy; and
- (iii) in connection with the exercise of the copyright or the protection of the performance, as the case may be;

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(b) *X* deals in any service that —

- (i) is promoted, advertised or marketed for the purpose of circumventing the measure;
- (ii) has only a limited commercially significant purpose or use other than to circumvent the measure; or
- (iii) is performed primarily for the purpose of circumventing the measure; and

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(c) *X* does so without the rights owner's authority.

(3) For the purposes of this Division, a dealing in a circumventing service is wilful if and only if —

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(a) in relation to subsection (2)(b)(i) — the promotion, advertising or marketing is —

- (i) done by *X* personally; or
- (ii) personally authorised by *X*;

(b) in relation to subsection (2)(b)(ii) — at the time of dealing, *X* knows or ought reasonably to know that the service has only a limited commercially significant purpose or use other than to circumvent the technological measure; and

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(c) in relation to subsection (2)(b)(iii) —

- (i) *X* personally performs the service primarily for the purpose of circumventing the technological measure; or
- (ii) *X* personally authorises the performance of the service primarily for the purpose of circumventing the technological measure.

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**Exception — access by non-profit library, etc., for purpose of acquisition**

**428.** A person may circumvent an access control measure by doing an act in relation to a protected copy if —

- 5           (a) the act is done to enable any of the following organisations to access the underlying work or recording of a performance:
- (i) a non-profit library or archive;
- (ii) an educational institution;
- 10           (iii) an institution aiding persons with print disabilities;
- (iv) an institution aiding persons with intellectual disabilities;
- (b) the sole purpose of accessing the work or recording is to decide whether to acquire a copy of it;
- 15           (c) the work or recording is otherwise not available to the organisation;
- (d) the act does not lead to a rights infringement in relation to the protected copy; and
- (e) the act does not violate any written law other than this Act.

20           **Exception — protecting personal information of network user**

**429.** A person may circumvent an access control measure by doing an act in relation to a protected copy if —

- 25           (a) the access control measure is capable of collecting or disseminating information about the identity of a user of a network and the manner of his or her use;
- (b) there is no conspicuous notice of the collection or dissemination of that information;
- (c) the act is done for the sole purpose of identifying and disabling the measure;
- 30           (d) the act does not affect any person's ability to access any protected copy;

- (e) the act is not a rights infringement in relation to the protected copy; and
- (f) the act does not violate any written law other than this Act.

**Exception — achieving interoperability between computer programs**

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**430.**—(1) A person may circumvent a technological measure by doing an act in relation to a protected copy that is a computer program if —

- (a) the protected copy is not an infringing copy;
  - (b) the act is done —
    - (i) in good faith;
    - (ii) with respect to particular elements of the computer program that are not readily available to the person doing the act; and
    - (iii) for the sole purpose of achieving interoperability of an independently created computer program with another computer program; and
  - (c) the act does not infringe the copyright in the firstmentioned computer program.
- (2) A person may deal in a circumventing device if —
- (a) the device is used only in circumstances to which subsection (1) applies; or
  - (b) at the time of dealing, the person does not know and could not reasonably have known that the device will be used in any other circumstances.
- (3) A person may deal in a circumventing service if —
- (a) the service is performed only in circumstances to which subsection (1) applies; or
  - (b) at the time of dealing, the person does not know and could not reasonably have known that the service will be performed in any other circumstances.

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**Exception — research on encryption technology**

**431.**—(1) A person may circumvent an access control measure by doing an act in relation to a protected copy if —

5 (a) the act is done in the course of research on any encryption technology and is needed to conduct that research;

(b) the person —

(i) is engaged in a legitimate course of study in the field of encryption technology;

10 (ii) is employed or appropriately trained or experienced in that field; or

(iii) is doing the act on behalf of a person so engaged, employed, trained or experienced;

(c) the act is done in good faith;

(d) the protected copy is not an infringing copy;

15 (e) the person doing the act has made a reasonable effort to obtain the authorisation of the rights owner;

(f) the act is not a rights infringement in relation to the protected copy; and

(g) the act does not violate any written law other than this Act.

20 (2) A person may deal in a circumventing device if —

(a) the device is used only in circumstances to which subsection (1) applies; or

25 (b) at the time of dealing, the person does not know and could not reasonably have known that the device will be used in any other circumstances.

(3) A person may deal in a circumventing service if —

(a) the service is performed only in circumstances to which subsection (1) applies; or

30 (b) at the time of dealing, the person does not know and could not reasonably have known that the service will be performed in any other circumstances.



(4) In this section, “encryption technology” means any technology for scrambling and descrambling information using mathematical formulae or algorithms.

**Exception — preventing minor access to online material**

**432.**—(1) A person may circumvent an access control measure by doing an act if — 5

- (a) the act consists of including a component or part in any technology, product or device for the sole purpose of preventing access by minors to any online material; and
- (b) the technology, product or device — 10
  - (i) is not promoted, advertised or marketed for the purpose of circumventing a technological measure;
  - (ii) is not one that has only a limited commercially significant purpose or use other than to circumvent a technological measure; and 15
  - (iii) is not designed or made primarily for the purpose of circumventing a technological measure.

(2) A person may deal in a circumventing device if the device is meant to be included in any technology, product or device in circumstances to which subsection (1) applies. 20

**Exception — testing of security flaws, etc., of computer**

**433.**—(1) A person may circumvent an access control measure by doing an act in relation to a protected copy if —

- (a) the act is done for the sole purpose of testing, investigating or correcting a security flaw or vulnerability of a computer; 25
- (b) the act is done in good faith;
- (c) the act is done by or with the authority of the owner of the computer;
- (d) the act is not a rights infringement in relation to the protected copy; and 30
- (e) the act does not violate any written law other than this Act.

(2) A person may deal in a circumventing device if —

(a) the device is used only in circumstances to which subsection (1) applies; or

(b) at the time of dealing, the person does not know and could not reasonably have known that the device will be used in any other circumstances.

(3) A person may deal in a circumventing service if —

(a) the service is performed only in circumstances to which subsection (1) applies; or

(b) at the time of dealing, the person does not know and could not reasonably have known that the service will be performed in any other circumstances.

(4) In this section, “computer” includes a computer system and a computer network.

**Exception — law enforcement, national defence, etc.**

**434.** The Government, or a person authorised by the Government, may for the purpose of law enforcement, intelligence, national defence or essential security, or for any other similar purpose —

(a) circumvent an access control measure; or

(b) deal in a circumventing device or service.

**Exception — prescribed exceptions**

**435.—(1)** A person may circumvent an access control measure if a prescribed exception applies.

(2) An exception may be prescribed if —

(a) the Minister is satisfied that the prohibition on circumventing access control measures has or is likely to impair or adversely affect a dealing in relation to a copyright work or protected performance; and

(b) the dealing is not a rights infringement in relation to the work or performance.

- (3) A prescribed exception may be limited —
- (a) to a specified work or performance;
  - (b) to a class of works or performances;
  - (c) to a class of persons; and
  - (d) by the purpose for which the otherwise circumventing act is done. 5

### **Action for infringement**

**436.** The rights owner of a protected copy may bring an action in the Court against any person who infringes a provision of this Division in relation to the protected copy. 10

### **Limitation of action**

**437.** An action may not be brought against an infringement of a provision of this Division under section 436 more than 6 years after the infringement takes place.

### **Remedies** 15

**438.—(1)** Subject to this section, the remedies that the Court may grant for an infringement of a provision of this Division include —

- (a) an injunction (which may be subject to terms);
- (b) either —
  - (i) damages; or 20
  - (ii) if the claimant so elects, statutory damages; and
- (c) an order that an offending article in the defendant's possession or before the Court be —
  - (i) delivered up and forfeited to the rights owner;
  - (ii) destroyed; or 25
  - (iii) otherwise dealt with.

(2) The remedies in subsection (1)(b) are not available against a defendant who deals in a circumventing device or service if it is proved that the dealing is not wilful.

(3) Damages under subsection (1)(b)(i) may take into account any profits that are attributable to the infringement.

(4) For the purposes of subsection (1)(b)(ii) —

(a) a claimant may only be awarded a total of \$20,000 in statutory damages in a single action, even if the action involves 2 or more infringements; and

(b) in deciding the amount of statutory damages to award, the Court must consider all relevant matters, including —

(i) the nature and purpose of the act constituting the infringement, including whether the act is of a commercial nature or otherwise;

(ii) the flagrancy of the infringement;

(iii) whether the defendant acted in bad faith;

(iv) any loss that the claimant has suffered or is likely to suffer because of the infringement;

(v) any benefit gained by the defendant because of the infringement;

(vi) the conduct of the parties before and during the proceedings; and

(vii) the need to deter similar infringements.

(5) In this section, an article is an “offending article” if —

(a) the article was used, or is being used, to carry out an infringement of a provision of this Division; or

(b) an infringement of a provision of this Division was or is being carried out in relation to the article.

## Offence

**439.**—(1) Subject to this section, a person commits an offence if —

(a) the person —

(i) wilfully circumvents an access control measure; or

(ii) wilfully deals in a circumventing device or service;

- (b) the person does so to obtain a commercial advantage or private financial gain; and
- (c) the circumvention or dealing is an infringement of a provision of this Division.

(2) Subsection (1) does not apply to any act done by or on behalf of — 5

- (a) a non-profit library or archive;
- (b) an educational institution;
- (c) an institution aiding persons with print disabilities;
- (d) an institution aiding persons with intellectual disabilities; 10  
or
- (e) a public and non-commercial broadcasting organisation that is prescribed.

(3) A person who commits an offence under subsection (1) shall be liable on conviction — 15

- (a) in relation to subsection (1)(a)(i), to a fine not exceeding \$20,000; and
- (b) in relation to subsection (1)(a)(ii), to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 20  
2 years or to both.

### **Power to deal with protected copies, etc., in proceedings under section 439**

**440.**—(1) This section applies where —

- (a) a person is charged for an offence under section 439 in a court (whether or not the person is convicted); and 25
- (b) there is before the court or in the person's possession an article that appears to be mainly used for circumventing technological measures applied to protected copies.

(2) The court may order that the article be —

- (a) delivered up and forfeited to the rights owner concerned; 30
- (b) destroyed; or

(c) otherwise dealt with.

### **Powers of entry, search and seizure**

**441.**—(1) Information may be given on oath to a court that there is reasonable cause to suspect that an article or a document —

- 5           (a) is located at any premises; and  
              (b) is evidence that an offence under section 439 has been committed.

(2) If information is given under subsection (1), the court may issue a warrant authorising a police officer (either with or without conditions) —

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- (a) to enter and search the premises for articles and documents specified (either specifically or in any general category) in the warrant; and  
              (b) if any articles or documents so specified are found at the premises — to seize them.
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(3) In this section and section 442, “document” means anything in which information of any description is recorded.

### **Disposal of seized evidence**

**442.**—(1) This section applies where —

- 20           (a) an article or a document is seized under section 441; and  
              (b) either —  
                  (i) no proceedings are brought for an offence under section 439 within 6 months of the seizure; or  
                  (ii) in the case of a seized article — proceedings are brought for an offence under section 439, but no order is made under section 440 in respect of the article.
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(2) The article or document must be —

- (a) returned to the person who was in possession of the article or document when it was seized; or
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- (b) if it is not practicable to so return the article or document — disposed of in accordance with section 108 of the Police Force Act (disposal of lost or unclaimed property deposited with police).

**Other rights not affected**

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**443.** This Division does not affect any provision of this Act providing for —

- (a) any copyright in a work;
- (b) any other right in relation to a performance or a recording of the performance;
- (c) any limitation on the rights in paragraph (a) or (b); or
- (d) any defence to an action for a rights infringement.

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PART 8

OFFENCES

*Division 1 — Offences with commercial element*

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**Commercial dealings, etc., in infringing copies**

**444.—(1)** A person commits an offence if —

- (a) at any time when copyright subsists in a work, the person does any of the following acts:
- (i) makes an article for sale or hire;
- (ii) deals commercially in an article;
- (iii) imports an article for the purpose of commercial dealing;
- (iv) possesses an article for the purpose of commercial dealing; and
- (b) when doing the act, the person knows or ought reasonably to know that the article is an infringing copy of the work.

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(2) A person commits an offence if —

(a) at any time during the protection period of a performance, the person does any of the following acts:

(i) makes an article for sale or hire;

(ii) deals commercially in an article;

(iii) imports an article for the purpose of commercial dealing;

(iv) possesses an article for the purpose of commercial dealing; and

(b) when doing the act, the person knows or ought reasonably to know that the article is an infringing copy of the performance.

### **Infringement for commercial advantage, etc.**

**445.** A person commits an offence if the person —

(a) wilfully commits a rights infringement for commercial advantage; or

(b) commits a copyright infringement under section 150.

### **Making or possessing article capable of making infringing copies**

**446.—**(1) A person commits an offence if —

(a) at any time when copyright subsists in a work, the person makes or possesses an article specifically designed or adapted for making infringing copies of the work; and

(b) the person knows or ought reasonably to know that the article is to be used to make infringing copies of the work for the purpose of commercial dealing.

(2) A person commits an offence if —

(a) at any time during the protection period of a performance, the person makes or possesses an article specifically designed or adapted for making infringing copies of the performance; and



- (b) the person knows or ought reasonably to know that the article is to be used to make infringing copies of the performance for the purpose of commercial dealing.

### **Punishment**

**447.**—(1) A person convicted of an offence under section 444 shall be liable — 5

(a) in the case of an individual —

(i) to a fine not exceeding the higher of the following:

(A) \$100,000;

(B) \$10,000 for each article in respect of which the offence is committed; 10

(ii) to imprisonment for a term not exceeding 5 years; or

(iii) to both; and

(b) in any other case — to a fine not exceeding the higher of the following: 15

(i) \$200,000;

(ii) \$20,000 for each article in respect of which the offence is committed.

(2) A person convicted of an offence under section 445 or 446 shall be liable — 20

(a) in the case of an individual — to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both; and

(b) in any other case — to a fine not exceeding \$200,000.

*Division 2 — Offences without commercial element* 25

### **Distribution, etc., of infringing copies of works**

**448.** A person commits an offence if —

(a) at any time when copyright subsists in a work, the person does any of the following acts:

- (i) distributes an article —
  - (A) other than for the purposes of trade; and
  - (B) to an extent that will prejudicially affect the copyright owner;
- 5 (ii) imports an article for the purpose of distributing the article —
  - (A) other than for the purposes of trade; and
  - (B) to an extent that will prejudicially affect the copyright owner;
- 10 (iii) possesses an article for the purpose of distributing the article —
  - (A) other than for the purposes of trade; and
  - (B) to an extent that will prejudicially affect the copyright owner; and
- 15 (b) when doing the act, the person knows or ought reasonably to know that the article is an infringing copy of the work.

### **Wilful and significant rights infringement**

**449.**—(1) A person commits an offence if —

- (a) the person wilfully commits a rights infringement; and
- 20 (b) the extent of the infringement is significant.

(2) All relevant matters must be considered in deciding whether the extent of a rights infringement is significant for the purposes of subsection (1), including —

- (a) the volume of any articles that are infringing copies;
- 25 (b) the value of any articles that are infringing copies; and
- (c) whether the infringement has a substantial prejudicial impact on the rights owner.

**Causing certain works or performances to be performed, seen or heard in public for private profit**

**450.**—(1) A person commits an offence if —

- (a) the person does any of the following acts:
  - (i) causes a literary, dramatic or musical work to be performed in public; 5
  - (ii) causes the visual images of a film to be seen in public or any sounds of the film to be heard in public (or both);
- (b) the act is done — 10
  - (i) other than by the reception of a television broadcast or cable programme;
  - (ii) for the person’s private profit; and
  - (iii) at any time when copyright subsists in the work; and
- (c) the person knows or ought reasonably to know that the act infringes the copyright in the work. 15

(2) A person commits an offence if —

- (a) the person does any of the following acts:
  - (i) causes a protected performance to be seen or heard live in public (or both); 20
  - (ii) causes a recording of a protected performance to be heard in public;
- (b) the act is done for the person’s private profit; and
- (c) the person knows or ought reasonably to know that the act is an infringing use of the performance. 25

**Advertisement for supply of infringing copies of works**

**451.**—(1) Subject to subsection (2), a person commits an offence if —

- (a) the person publishes, or causes to be published, an advertisement in Singapore; and 30

(b) the advertisement is for the supply in Singapore (whether from within or outside Singapore) of an infringing copy of a work.

5 (2) It is a defence for the person to prove, on a balance of probabilities, that the person —

(a) acted in good faith; and

(b) had no reasonable grounds to believe that the advertisement would or could lead to an infringement of the copyright in the work.

10 (3) For the purposes of subsection (1), if a copy of a work is created when a communication of the work is received and recorded, the communication of the work is taken to be the supply of the work at the place where the copy is created.

### **Punishment**

15 **452.**—(1) A person convicted of an offence under section 448 shall be liable —

(a) in the case of an individual —

(i) to a fine not exceeding the higher of the following:

(A) \$20,000;

20 (B) \$2,000 for each article in respect of which the offence is committed;

(ii) to imprisonment for a term not exceeding 2 years; or

(iii) to both; and

25 (b) in any other case — to a fine not exceeding the higher of the following:

(i) \$40,000;

(ii) \$4,000 for each article in respect of which the offence is committed.

30 (2) A person convicted of an offence under section 449, 450 or 451 shall be liable —

- (a) in the case of an individual — to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or to both; and
- (b) in any other case — to a fine not exceeding \$40,000.

*Division 3 — Other provisions*

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**Presumption where person possesses 5 or more infringing copies**

**453.**—(1) This section applies to all offences in this Part except offences under section 445(a) or 449.

(2) Unless the contrary is proved, a person who possesses 5 or more infringing copies is presumed to possess those copies —

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- (a) other than for private and domestic use; or
- (b) for the purpose of sale.

**Proof of subsistence of copyright and protection of performance, etc., by affidavit**

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**454.**—(1) This section applies to proceedings for an offence under this Part.

(2) An affidavit may be made stating that —

- (a) at a specified time, copyright subsists in a work or a performance is a protected performance;
- (b) the deponent is the rights owner or is making the affidavit on behalf of the rights owner; and
- (c) a copy of the work or a recording of the performance annexed to the affidavit is a true copy or recording.

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(3) Subject to subsections (4) and (5), the affidavit is admissible and is prima facie proof of the matters mentioned in subsection (2).

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(4) Subsection (3) does not apply if it is proved that the deponent is neither the rights owner nor acting on behalf of the rights owner.

(5) If the accused person desires in good faith to cross-examine the deponent on the matters in the affidavit, subsection (3) does not apply unless —

- (a) the deponent appears as a witness for cross-examination; or
- (b) the court allows the affidavit to be used without the deponent so appearing.

**Power to deal with infringing copies, etc., in proceedings under this Part**

455.—(1) This section applies where —

- (a) a person is charged for an offence under this Part in a court (whether or not the person is convicted); and
- (b) any of the following items is before the court or in the person's possession:
  - (i) any infringing copy;
  - (ii) any article that has been used to make infringing copies.

(2) The court may order that the items be —

- (a) delivered up and forfeited to the rights owner concerned;
- (b) destroyed; or
- (c) otherwise dealt with.

**Powers of entry, search and seizure**

456.—(1) Information may be given on oath to a court that there is reasonable cause to suspect that an article or a document is —

- (a) located at any premises; and
- (b) evidence that an offence under this Part has been committed.

(2) If information is given under subsection (1), the court may issue a warrant authorising a police officer (either with or without conditions) —

- (a) to enter and search the premises for articles and documents specified (either specifically or in any general category) in the warrant; and
- (b) if any articles or documents so specified are found at the premises — to seize them.

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(3) In this section and section 457, “document” means anything in which information of any description is recorded.

### **Disposal of seized evidence**

**457.**—(1) This section applies where —

- (a) an article or a document is seized under section 456; and
- (b) either —
  - (i) no proceedings are brought for an offence under this Part within 6 months of the seizure; or
  - (ii) in the case of a seized article — proceedings are brought for an offence under this Part, but no order is made under section 455 in respect of the article.

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(2) The article or document must be —

- (a) returned to the person who was in possession of the article or document when it was seized; or
- (b) if it is not practicable to so return the article or document — disposed of in accordance with section 108 of the Police Force Act (disposal of lost or unclaimed property deposited with police).

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## PART 9

### REGULATION OF COLLECTIVE MANAGEMENT ORGANISATIONS

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#### *Division 1 — Preliminary*

### **Interpretation of this Part**

**458.** In this Part, unless the context otherwise requires —

“cessation order” means a cessation order under section 465;

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“class licence” —

(a) means a class licence established under section 462;  
and

5 (b) in relation to a CMO, means a licence applicable to  
the CMO;

“class licence condition” means a condition of a class licence;

“collective management organisation” or “CMO” has the  
meaning given by section 459;

10 “member”, in relation to a CMO, has the meaning given by  
section 459(3);

“officer” —

15 (a) in relation to a body corporate, means any director,  
partner, member of the committee of management,  
chief executive, manager, secretary or other similar  
officer of the body corporate and includes any person  
purporting to act in any such capacity;

20 (b) in relation to an unincorporated association (other  
than a partnership), means the president, the  
secretary, or any member of the committee of the  
unincorporated association, or any person holding a  
position analogous to that of president, secretary or  
member of a committee and includes any person  
purporting to act in any such capacity; and

(c) in relation to a partnership, means any partner;

25 “permission” —

(a) in relation to a copyright work, means a copyright  
licence relating to the use of the work; and

(b) in relation to a protected performance, means  
authority relating to the use of the performance;

30 “regulatory direction” means a direction given under  
section 464;

“tariff scheme” has the meaning given by section 459(3).



**Interpretation: what is a collective management organisation (CMO) and who are its members; what is a tariff scheme**

**459.**—(1) In this Part, a person (*X*) is a “collective management organisation” or “CMO” if —

- (a) *X* is in the business of collectively managing the use of copyright works or protected performances (or both), including —
  - (i) negotiating the terms of use;
  - (ii) granting permission for the use;
  - (iii) administering any terms of use; and
  - (iv) collecting and distributing royalties or any other payment for the use;
- (b) those works or performances —
  - (i) are made or given by different authors, makers, publishers or performers; and
  - (ii) are not made or given by those authors, makers, publishers or performers —
    - (A) as employees of *X* or a prescribed related person; or
    - (B) under a commission from *X* or a prescribed related person;
- (c) *X* manages those works or performances —
  - (i) as the rights owner or with the authority of the rights owners; and
  - (ii) for the collective benefit of —
    - (A) those authors, makers, publishers or performers; or
    - (B) the rights owners of those works or performances (but not including *X*);
- (d) *X* formulates or operates one or more schemes (however named) setting out —

- (i) the classes of cases in which *X* is willing to grant, or procure the grant of, permission to use the works or performances that *X* manages; and
  - (ii) the terms (whether relating to the payment of a fee or charge or otherwise) on which *X* is willing to grant, or procure the grant of, that permission;
- (e) one or more of the schemes mentioned in paragraph (d) are available to the public (or a segment of the public) in Singapore; and
- (f) *X* does not fall under any prescribed class of excluded persons.

(2) For the purposes of subsection (1) —

(a) to avoid doubt, *X* and the related person mentioned in subsection (1)(b)(ii) may be —

- (i) an individual;
- (ii) an organisation, an association or a body;
- (iii) a corporate or an unincorporate entity; or
- (iv) constituted under the law of a country other than Singapore;

(b) it does not matter whether the business mentioned in subsection (1)(a) —

- (i) is carried on for profit or otherwise; or
- (ii) is the sole or main business of *X*; and

(c) it does not matter whether the schemes mentioned in subsection (1)(d) are formulated or brought into operation before, on or after the appointed day.

(3) In this Part —

“members”, in relation to a CMO, means the authors, makers, publishers, performers and rights owners mentioned in subsection (1)(c)(ii), but not the CMO itself;

“tariff scheme” means a scheme described in subsection (1)(d) that is available to the public (or a segment of the public) in Singapore.

### **Purpose of this Part**

**460.** The purpose of this Part is to —

- (a) regulate CMOs under a class licensing scheme administered by IPOS; and
- (b) confer on Copyright Tribunals powers over the circumstances in which, and the terms on which, CMOs grant permission to use copyrighted works and protected performances.

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### *Division 2 — Class licensing of CMOs*

#### **CMOs must be licensed**

**461.—**(1) It is an offence for a person to carry on business as a CMO —

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- (a) without a class licence; or
- (b) while under a cessation order.

(2) A person who commits an offence under subsection (1) shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both.

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#### **Class licences**

**462.—**(1) The Minister may, by regulations —

- (a) establish one or more class licences (whether for all CMOs or for different classes of CMOs);
- (b) prescribe, change, add to or revoke class licence conditions; and
- (c) end a class licence.

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(2) Without limiting subsection (1)(b), class licence conditions may relate to —

- (a) the rights that a CMO must grant to its members;

30

- (b) the collection and distribution of royalties or any other payment by the CMO;
- (c) the information that a CMO must provide to its members or the public;
- 5 (d) the manner by which a CMO must resolve any disputes with its members; and
- (e) the governance of a CMO.

**Financial penalty for non-compliance with class licence conditions**

10 **463.**—(1) If IPOS finds that a licensed CMO has contravened any of its class licence conditions, IPOS may, by written notice, impose —

- (a) a financial penalty not exceeding \$20,000 on the CMO; and
- 15 (b) a financial penalty not exceeding \$20,000 on each officer of the CMO that IPOS considers to be responsible for the contravention.

(2) Before imposing a financial penalty on a person under subsection (1), IPOS must give the person an opportunity to make representations in accordance with the prescribed procedure.

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(3) A financial penalty imposed under subsection (1) is recoverable as a fine.

(4) Financial penalties collected under subsection (1) must be paid into the Consolidated Fund.

25 **Regulatory directions to CMOs and their officers**

**464.**—(1) Subject to subsection (3), IPOS may, by written notice, give directions to a CMO or any officer of a CMO for any of the following purposes:

- 30 (a) to obtain information about the CMO and its business as a CMO, for the purpose of regulating CMOs in general;
- (b) to secure the CMO's compliance with its class licence conditions;

- (c) to ensure the good governance of the CMO;
  - (d) to investigate or remedy any contravention by the CMO of its class licence conditions;
  - (e) where the CMO is under a cessation order, to secure the orderly cessation of the CMO's business as a CMO. 5
- (2) The power of IPOS under subsection (1) includes directing a CMO or any officer of a CMO to —
- (a) provide security for the CMO's compliance with its class licence conditions;
  - (b) conduct an audit of the CMO's business at the expense of the CMO or officer; 10
  - (c) if there is reason to believe, based on credible information, that the CMO has contravened one or more of its class licence conditions —
    - (i) submit to an audit of the CMO's business conducted by or at the direction of IPOS; 15
    - (ii) pay the cost incurred by IPOS for the audit; and
    - (iii) pay any other cost incurred by IPOS in relation to the audit, but only if the findings of the audit lead to —
      - (A) a financial penalty being imposed on the CMO or an officer of the CMO; 20
      - (B) a regulatory direction to the CMO or an officer of the CMO to turn over the conduct of the CMO's business to a person appointed by IPOS; or 25
      - (C) a cessation order being made against the CMO;
  - (d) secure the removal or appointment of a person as an officer of the CMO;
  - (e) turn over the conduct of the CMO's business to a person appointed by IPOS; 30
  - (f) stop taking on the management of new works or performances; and

(g) in the case of an officer of the CMO — resign from or otherwise cease to act in that capacity.

(3) Regulations may require IPOS to give a person an opportunity to make representations in accordance with the prescribed procedure before giving a regulatory direction to the person.

(4) IPOS may, by written notice, revoke a regulatory direction at any time.

(5) It is an offence for a person to —

(a) fail to comply with a regulatory direction; or

(b) knowingly do anything that prevents or impedes compliance with a regulatory direction.

(6) A person who commits an offence under subsection (5) shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 6 months or to both.

(7) For the purposes of subsection (2)(c) —

(a) IPOS may certify in writing the cost incurred by IPOS for or in relation to an audit; and

(b) unless the contrary is proved, the certified cost is presumed to be the cost for or in relation to that audit and is recoverable as a debt due from the CMO or officer to IPOS.

(8) A regulatory direction has effect despite —

(a) any written law; and

(b) in the case of a CMO that is not an individual — anything in the memorandum or articles of association, or other constitution, of the CMO.

### **Cessation order**

**465.**—(1) IPOS may, by written notice, order a CMO to cease its business as a CMO indefinitely or for a specified period if —

(a) the CMO fails to comply with —

(i) a class licence condition; or

(ii) a regulatory direction given to it;

- (b) an officer of the CMO fails to comply with a regulatory direction given to the officer;
- (c) there is significant impropriety in the financial affairs of the CMO; or
- (d) IPOS considers that the public interest so requires. 5

(2) Before making a cessation order against a CMO, IPOS must give the CMO an opportunity to make representations in accordance with the prescribed procedure.

(3) To avoid doubt, a cessation order may be made in addition to any financial penalty or sentence imposed on the CMO. 10

(4) When a CMO is under a cessation order —

- (a) every class licence ceases to apply to it, unless the order otherwise specifies; but
- (b) to avoid doubt, it is still subject to regulatory directions.

(5) IPOS may, by written notice, revoke a cessation order at any time. 15

### **Reconsideration of decisions**

**466.**—(1) This section applies where IPOS —

- (a) imposes a financial penalty on a person;
- (b) makes a cessation order against a person; or 20
- (c) gives a regulatory direction to a person.

(2) The person may apply to IPOS, within the prescribed time and in the prescribed manner, for IPOS to reconsider its decision.

(3) In an application for reconsideration —

- (a) IPOS must, within the prescribed time, confirm, vary or set aside its decision; and 25
- (b) unless IPOS otherwise orders, a financial penalty must be paid, and a cessation order or regulatory direction complied with, pending reconsideration by IPOS.

(4) This section does not require IPOS to reconsider a decision made after reconsideration.

## Appeal

**467.**—(1) This section applies where IPOS, after reconsideration  
5 under section 466 —

(a) confirms or varies a financial penalty imposed on a person;

(b) confirms or varies a cessation order made against a person;  
or

(c) confirms or varies a regulatory direction given to a person  
10 to turn over the conduct of the CMO’s business to a person appointed by IPOS.

(2) The person may appeal to the Minister within the prescribed time and in the prescribed manner.

(3) In an appeal —

15 (a) the Minister may confirm, vary or set aside the decision appealed against;

(b) for the purposes of deciding the appeal, the Minister may require the appellant or any other person (whether or not the person is a party to the appeal) to provide the Minister with any information that is relevant to the appeal, and to do so within the time and the manner specified by the Minister; and  
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(c) unless the Minister otherwise orders, the person must pay the financial penalty or comply with the cessation order or regulatory direction (as the case may be) pending the appeal.  
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*Division 3 — Review of tariff schemes, etc.,  
by Copyright Tribunals*

### Interpretation: who is an intending user of a tariff scheme

30 **468.** In this Division, an “intending user”, in relation to a tariff scheme —



- (a) is a person who requires permission in a case falling under a class of cases to which the tariff scheme applies; and
- (b) includes a person who has been granted permission under the tariff scheme, but who requires further permission of the same kind after the expiry of the granted permission.

5

**Interpretation: when does a tariff scheme apply or not apply to a case**

**469.** For the purposes of this Division, a tariff scheme (being a scheme that is in force) is taken —

- (a) subject to paragraph (b), as applying to a case if permission would be granted in that case under the terms of the tariff scheme; and
- (b) as not applying to a case if —
  - (i) the permission granted would be subject to exceptions; and
  - (ii) the case falls within one or more of those exceptions.

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**Review of proposed tariff scheme**

**470.—(1)** A CMO may refer a tariff scheme formulated by it to a Copyright Tribunal before bringing the scheme into force.

(2) The Tribunal must, after reviewing the tariff scheme and having regard to what is reasonable in the circumstances —

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- (a) make an order to confirm or vary the tariff scheme (including substituting the tariff scheme with another tariff scheme);
- (b) specify the date from which the order has effect; and
- (c) specify whether the order has effect indefinitely or for a specified period.

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(3) To avoid doubt, the Tribunal is not constrained by any term of the tariff scheme (whether relating to its duration or otherwise) in making an order under subsection (2).

30

(4) Before an order is made under subsection (2), the CMO may do either or both of the following:

- (a) bring the tariff scheme into force;
- (b) withdraw the reference (whether or not the tariff scheme has been brought into force).

(5) Once an order under subsection (2) takes effect, the tariff scheme —

- (a) comes into force (if it has not already been brought into force); and
- (b) remains in force so long as the order has effect.

### **Review of in-force tariff scheme**

**471.**—(1) This section applies where —

- (a) a tariff scheme is in force; and
- (b) there is a dispute about the terms of the tariff scheme between the CMO that formulated the tariff scheme and —
  - (i) an intending user of the tariff scheme; or
  - (ii) an organisation that is representative of intending users of the tariff scheme.

(2) The CMO, user or organisation may refer the tariff scheme, so far as it relates to the class of cases the user or organisation is concerned with, to a Copyright Tribunal.

(3) The Tribunal must reject the reference without considering its merits if —

- (a) it is made by an organisation; and
- (b) the organisation is not reasonably representative of the intending users it claims to represent.

(4) Subject to subsection (3), the Tribunal must, after reviewing the tariff scheme and having regard to what is reasonable in the circumstances —

- (a) make an order to confirm or vary the tariff scheme (including substituting the tariff scheme with another tariff scheme);
- (b) specify the date from which the order has effect; and
- (c) specify whether the order has effect indefinitely or for a specified period. 5

(5) To avoid doubt, the Tribunal is not constrained by any term of the tariff scheme (whether relating to its duration or otherwise) in making an order under subsection (4).

(6) The reference may be withdrawn at any time before the Tribunal makes an order under subsection (4). 10

(7) Despite anything in the tariff scheme but subject to any interim order made by the Tribunal, the tariff scheme remains in force while the reference is pending.

(8) Once an order made under subsection (4) takes effect, the tariff scheme remains in force so long as the order has effect. 15

### **Review after order made under section 470 or 471, etc.**

**472.**—(1) This section applies where an order (called in this section the existing order) has been made under section 470 or 471, or under subsection (6)(b), in respect of a tariff scheme. 20

(2) Subject to subsections (3) and (4), the following persons may refer the tariff scheme to a Copyright Tribunal at any time while the existing order has effect:

- (a) the CMO operating the tariff scheme;
- (b) an intending user of the tariff scheme; 25
- (c) an organisation that is representative of intending users of the tariff scheme.

(3) If the existing order applies only to one or some (but not all) of the classes of cases to which the tariff scheme applies —

- (a) the intending user mentioned in subsection (2)(b) must be an intending user in respect of the class or classes of cases to which the existing order applies; 30

(b) the organisation mentioned in subsection (2)(c) must be representative of intending users in respect of the class or classes of cases to which the existing order applies; and

(c) the reference must relate only to the class or classes of cases to which the existing order applies.

(4) The permission of a Tribunal is required to bring a reference in the following cases:

(a) if the existing order has effect indefinitely or for a period exceeding 15 months — less than 12 months have elapsed since the date of the order;

(b) if the existing order has effect for a period of 15 months or less — there are more than 3 months before the order expires.

(5) The Tribunal must reject the reference without considering its merits if —

(a) it is made by an organisation; and

(b) the organisation is not reasonably representative of the intending users it claims to represent.

(6) Subject to subsection (5), the Tribunal must, after reviewing the tariff scheme and having regard to what is reasonable in the circumstances —

(a) confirm the existing order; or

(b) revoke the existing order and make a fresh order to vary the tariff scheme (including substituting the tariff scheme with another tariff scheme), in which case the Tribunal must also —

(i) specify the date from which the fresh order has effect; and

(ii) specify whether the fresh order has effect indefinitely or for a specified period.

(7) To avoid doubt, the Tribunal is not constrained by any term of the tariff scheme (whether relating to its duration or otherwise) in making a fresh order under subsection (6)(b).

(8) The reference may be withdrawn at any time before the Tribunal makes a decision under subsection (6).

(9) Despite anything in the tariff scheme but subject to any interim order made by the Tribunal, the tariff scheme remains in force while the reference is pending. 5

(10) Once an order under subsection (6)(b) takes effect, the tariff scheme remains in force so long as the order has effect.

(11) This section does not prevent a person from bringing a reference of the tariff scheme under section 470 or 471 at any time —

(a) in respect of any class of cases to which the existing order does not apply; or 10

(b) after the existing order expires.

**Effect where tariff scheme remains in force pending reference or after Tribunal order**

**473.**—(1) This section applies where a tariff scheme remains in force — 15

(a) under section 471(7) or 472(9) while a reference is pending; or

(b) under an order of a Copyright Tribunal made under section 470(2), 471(4) or 472(6). 20

(2) While the tariff scheme remains in force, a person is deemed to have been granted permission in accordance with the tariff scheme if the person complies with the terms of the tariff scheme (including any variations ordered by the Tribunal) at all material times.

(3) For the purposes of subsection (2), if the terms of a tariff scheme require the payment of a sum the amount of which cannot be ascertained at the material time, a person is deemed to have complied with those terms if the person — 25

(a) gives the CMO operating the tariff scheme a written undertaking to pay the sum when it is ascertained; and 30

(b) pays the sum to the CMO as soon as practicable when it is ascertained.

(4) If —

(a) while the tariff scheme remains in force, a person does an act that —

(i) is a rights infringement; but

5 (ii) would not be a rights infringement if permission had been granted under the tariff scheme; and

(b) the terms of the tariff scheme require the payment of a sum for the grant of that permission,

the sum is recoverable as a debt due by the person to the CMO.

10 (5) Upon the payment or recovery of the sum mentioned in subsection (4), the person is deemed for the purposes of subsection (2) to have complied with the terms of the tariff scheme so far as they relate to the payment of the sum.

15 **Application to Tribunal for permission to be granted on reasonable terms**

**474.**—(1) The following persons or organisations may make an application against a CMO to a Copyright Tribunal:

(a) a person (*X*) who claims, in a case to which a tariff scheme applies, that —

20 (i) the CMO operating the tariff scheme has refused to grant *X* (or procure the grant to *X* of) permission in accordance with the terms of the tariff scheme after a request was made by *X*; or

25 (ii) the terms of the tariff scheme for granting (or procuring the grant of) permission to *X* are unreasonable in the circumstances;

(b) a person (*Y*) who claims to require permission in a case where —

30 (i) a tariff scheme does not apply, has not been formulated or is not in force; and

(ii) a CMO has —

(A) unreasonably refused to grant (or procure the grant of) the required permission after a request was made by *Y*; or

(B) proposed to grant (or procure the grant of) permission to *Y* on terms that are unreasonable in the circumstances;

(c) an organisation (*Z*) that is representative of persons to which paragraph (b) applies.

(2) For the purposes of subsection (1), a CMO is deemed to have refused to grant (or procure the grant of) permission to a person if it fails to grant (or procure the grant of) that permission within a reasonable time after a request to do so.

(3) The Tribunal must reject the application without considering its merits if —

(a) it is made by an organisation; and

(b) the organisation is not reasonably representative of the persons it claims to represent.

(4) Subject to subsection (3), the Tribunal may, having regard to what is reasonable in the circumstances, order the CMO —

(a) to grant (or procure the grant of) the permission required by *X*, *Y* or the persons represented by *Z*, as the case may be; and

(b) to do so on the terms specified by the Tribunal.

(5) While an order under subsection (4) has effect, *X*, *Y* or a person represented by *Z* (as the case may be) is deemed to have been granted the relevant permission if *X*, *Y* or the person complies with the terms specified by the Tribunal at all material times.

(6) For the purposes of subsection (5), if the terms specified by the Tribunal require the payment of a sum the amount of which cannot be ascertained at the material time, a person is deemed to have complied with those terms if the person —

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- (a) gives the CMO a written undertaking to pay the sum when it is ascertained; and
- (b) pays the sum to the CMO as soon as practicable when it is ascertained.

5 (7) If —

(a) while the order of the Tribunal has effect, a person does an act that —

(i) is a rights infringement; but

(ii) would not be a rights infringement if permission is deemed to have been granted under subsection (5); and

(b) the terms of the order require the payment of a sum for the grant of that permission,

the sum is recoverable as a debt due by the person to the CMO.

15 (8) Upon the payment or recovery of the sum mentioned in subsection (7), the person is deemed for the purposes of subsection (5) to have complied with the terms of the order so far as they relate to the payment of the sum.

20 **Orders not to contradict regulatory directions or class licence conditions**

**475.**—(1) Despite any contrary provision in this Division, a Copyright Tribunal may not order a CMO to do anything that contravenes any class licence condition or regulatory direction applicable to the CMO.

25 (2) Without limiting section 494 (reference of question of law), the question whether an order or a proposed order of a Copyright Tribunal requires a CMO to do anything that contravenes any class licence condition or regulatory direction applicable to the CMO is a question of law that may be referred under that section.



*Division 4 — Miscellaneous***CMO may apply to Tribunal on behalf of rights owners**

**476.**—(1) A CMO that manages the use of a work or protected performance on behalf of the rights owner may make an application to a Tribunal under this Act on behalf of the rights owner. 5

(2) A CMO may make a single application under subsection (1) on behalf of 2 or more rights owners.

## PART 10

## COPYRIGHT TRIBUNALS

*Division 1 — Preliminary* 10**Interpretation of this Part**

**477.** In this Part, unless the context otherwise requires —

“case”, in relation to a Tribunal, means a proceeding other than an inquiry;

“inquiry” means an inquiry under section 262(2); 15

“member”, in relation to a Tribunal, means the members of the Tribunal as constituted under section 486, or reconstituted under section 487, and includes the presiding member;

“officer”, in relation to the Tribunals, includes the secretary;

“order” includes an interim order; 20

“panel” means the panel constituted by section 480;

“party” includes a person making a representation to a Tribunal in an inquiry;

“president” means the president of the Tribunals appointed under section 480(1)(a); 25

“presiding member”, in relation to a Tribunal, means the presiding member of the Tribunal as constituted under section 486 or reconstituted under section 487;

“proceeding”, in relation to a Tribunal, includes an inquiry;

“secretary” means the secretary of the Tribunals appointed under section 481(a).

### **Agreements or awards not affected**

5 **478.** This Part does not affect the operation of any agreement or of any award made by an arbitrator (whether the agreement or award is made before, on or after, the appointed day).

### *Division 2 — Establishment of Tribunals*

#### **Establishment of Tribunals**

10 **479.** There is to be one or more Copyright Tribunals for the purposes of this Act.

#### **Appointment of president, deputy presidents and panel**

**480.**—(1) The Minister is to appoint —

- (a) a president of the Tribunals;
- (b) not more than 2 deputy presidents of the Tribunals; and
- 15 (c) not more than 15 persons to be members of a panel.

(2) The president must be a person who is, or is qualified to be appointed as, a District Judge.

20 (3) A deputy president must be a person who has been for 5 or more years a qualified person as defined by section 2(1) of the Legal Profession Act.

(4) A person appointed under subsection (1) —

- (a) is to hold office for a term specified by the Minister when making the appointment;
- 25 (b) may, if the appointment expires while he or she is hearing a case, continue to hear and decide the case (and is deemed to continue to hold the appointment for this purpose);
- (c) may resign his or her office at any time by writing to the Minister; and
- (d) is eligible for reappointment.

(5) The Minister may revoke the appointment of a person under subsection (1) on the grounds of the person's unfitness to continue in office or incapacity to perform the functions of his or her office.

(6) An appointment under this section must be notified in the *Gazette*.

5

### **Appointment of secretary and other officers**

**481.** The Minister may appoint —

- (a) a secretary to the Tribunals; and
- (b) other officers of the Tribunals.

### **Remuneration, allowances and expenses**

10

**482.**—(1) The Minister may determine that a person (other than a public officer) who sits as a member of a Tribunal is to be paid a remuneration (whether by way of salary or fees) and allowances.

(2) The remuneration and allowances in subsection (1), and the expenses of the Tribunals as determined by the Minister, are to be paid out of moneys provided by Parliament.

15

(3) The remuneration of the secretary and other officers of the Tribunals are to be paid out of the funds of IPOS.

### **Protection of members**

**483.** A member of a Tribunal has, in the performance of his or her duty as a member, the same protection that a District Judge has under the State Courts Act.

20

### **Members and officers deemed to be public servants**

**484.** Every member of a Tribunal and every officer of the Tribunals are deemed to be public servants within the meaning of the Penal Code.

25

*Division 3 — Functions, procedure and evidence***Functions of Tribunals**

**485.** It is the function of the Copyright Tribunals to, in accordance with this Act —

- 5           (a) decide the amount of equitable remuneration payable under the provisions of this Act;
- (b) hear and determine an application for a suspension order under section 199;
- (c) hold inquiries under section 262;
- 10           (d) decide the terms of doing any public act under section 286;
- (e) exercise the powers relating to tariff schemes in Division 3 of Part 9; and
- (f) perform any other function conferred on the Copyright Tribunals by this Act.

15           **Constitution of Tribunal**

**486.** Subject to this Act, a Tribunal is constituted by —

- (a) the president, or a deputy president designated by the president, who is to be the presiding member; and
- (b) 2 other members selected by the president from the panel.

20           **Reconstitution of Tribunal if member unable to continue**

**487.—**(1) This section applies where any member of a Tribunal (called in this section the former member) is unable to continue taking part in a proceeding because of illness, absence or any other cause.

25           (2) If the former member is the president, the Tribunal is to be reconstituted with a new president appointed by the Minister.

(3) If the former member is a deputy president, the president is to reconstitute the Tribunal by —

- (a) sitting as the presiding member; or
- 30           (b) designating another deputy president to sit as the presiding member.

(4) If the former member is a member of the panel, the president is to reconstitute the Tribunal by selecting another member of the panel to sit on the Tribunal.

(5) The Tribunal as reconstituted under subsection (2), (3) or (4) —

(a) may continue to dispose of the proceeding, and for this purpose may consider everything that has been said or done earlier in the proceeding; but

(b) if the proceeding is a case, the Tribunal must hear the case afresh if all the parties so request.

### **Sittings**

**488.** A Tribunal is to sit at the times and places decided by the presiding member.

### **Proceedings to be in public**

**489.**—(1) Subject to subsection (2), the proceedings of a Tribunal are to be held in public.

(2) If a Tribunal considers that there is sufficient reason to do so, the Tribunal may —

(a) direct that —

(i) a proceeding before the Tribunal is to be held in private;

(ii) only specified individuals may be admitted to a proceeding before the Tribunal; or

(iii) specified individuals are excluded from a proceeding before the Tribunal; and

(b) prohibit or restrict the publication of —

(i) any evidence given (whether in public or private, or orally or in writing) before the Tribunal; or

(ii) any information relating to a proceeding before the Tribunal.

(3) In subsection (2), “proceeding” includes part of a proceeding.

### **Decisions how made**

**490.**—(1) A decision of a Tribunal is to be made in accordance with the opinion of the majority of its members.

5 (2) Subsection (1) does not apply to any matter that the presiding member may decide alone.

### **Evidence**

**491.**—(1) A Tribunal is not bound by the Evidence Act or any other rule of evidence.

(2) A Tribunal may —

10 (a) take evidence on oath and for that purpose administer an oath;

(b) take evidence orally or in writing;

(c) allow or appoint expert witnesses to assist the Tribunal; or

(d) summon a person to appear before the Tribunal to —

15 (i) give evidence; or

(ii) produce any document or thing that is in the possession, custody or control of the person.

(3) A witness before a Tribunal has the same privileges and immunities, and is subject to the same civil and criminal liabilities (in  
20 addition to those under this Act), as if he or she were a witness before a District Court.

### **Provisions on inquiries**

**492.**—(1) After a Tribunal completes an inquiry, it must submit a report to the Minister setting out —

25 (a) the findings and recommendations required by its terms of reference; and

(b) any other matter that the Tribunal considers to be relevant to its terms of reference.

(2) A Tribunal may submit an interim report before submitting its  
30 final report.

(3) The Minister may (but need not) cause a report or an interim report of a Tribunal to be made public.

(4) In this section, “Minister” means the Minister charged with the responsibility for trade and industry.

### **Orders of Tribunal**

5

**493.**—(1) A Tribunal may make an interim order in a case before making its final decision on the case.

(2) After a Tribunal makes an order, it may —

(a) at any time, correct any clerical error in the order; and

(b) within 7 working days after the order is delivered, correct any other error in the order.

10

(3) In any proceedings, a document purporting to be certified by the secretary as a true copy of an order of the Tribunal is evidence of the order.

(4) To avoid doubt, subsection (3) does not prevent an order of a Tribunal from being proved in any other way.

15

(5) Where a Tribunal orders a person (*X*) to pay a sum to another person (*Y*) (whether as equitable remuneration, costs or otherwise), that sum is recoverable from *X* as a debt due to *Y*.

### **Reference on question of law arising in case to General Division of High Court**

20

**494.**—(1) A Tribunal may, in accordance with this section, refer a question of law arising in any case before the Tribunal for the opinion of the General Division of the High Court.

(2) A reference is to be made by way of a case stated.

25

(3) A reference —

(a) may be made by the Tribunal on its own motion (whether or not it has decided the case);

(b) may be made by the Tribunal on the request of a party, which request may only be made —

30

(i) before the Tribunal decides the case; or

(ii) within 14 days after the date on which the Tribunal decides the case; and

(c) must be made by the Tribunal if it is so directed by the General Division of the High Court in an application, which application may only be made —

(i) by a party who made a request under paragraph (b) that was refused by the Tribunal; and

(ii) within 14 days after the date of the refusal.

(4) Every party to the case is entitled to be heard in a reference under subsection (1) or an application under subsection (3)(c).

(5) Where a reference is made —

(a) the General Division of the High Court is to give its opinion on the referred question of law and remit the case to the Tribunal; and

(b) the Tribunal must then give effect to the opinion of the General Division of the High Court and for this purpose may —

(i) reconsider or rehear any matter in the case;

(ii) modify or revoke any order previously made by the Tribunal; and

(iii) make a fresh order.

(6) The decision of the General Division of the High Court on a reference is final.

(7) In this section, “question of law” does not include a question whether there is sufficient evidence to justify a finding of fact by a Tribunal.

## **Representation**

**495.** In any proceeding before a Tribunal —

(a) any party may be represented by an advocate;

(b) an individual who is a party may appear in person; and



- (c) a party that is not an individual may be represented by a prescribed person, but only if permission is granted by the Tribunal.

### **Costs**

**496.** A Tribunal may make any order as to, or relating to, the costs of any proceeding. 5

### **Regulations on procedure**

**497.** Regulations may prescribe the practice and procedure to be followed in the Tribunals, including —

- (a) the persons who may bring proceedings before a Tribunal; 10
- (b) the manner in which, and the time within which, a proceeding is to be brought;
- (c) the parties to a proceeding before a Tribunal (including persons who may be joined as parties);
- (d) any notice or publicity to be given of a proceeding or an intended proceeding before a Tribunal; 15
- (e) any notice or publicity to be given of an order or an intended order of a Tribunal;
- (f) the manner in which a summons of a Tribunal is to be made or served; 20
- (g) the scale of costs, fees and expenses to be paid to any party or witness;
- (h) the costs and fees payable in proceedings before a Tribunal;
- (i) the manner in which an order or a report of a Tribunal is to be made; 25
- (j) the procedure to be followed in a Tribunal in relation to making a reference under section 494;
- (k) circumstances in which a Tribunal must or may suspend an order made by it and, in relation to a suspended order, 30

modifications to any provisions of this Act relating to the effect of an order; and

- (*l*) matters that are to be or may be regulated by practice directions issued for the time being by the president.

5 **Other provisions on procedure**

**498.**—(1) A Tribunal is to conduct proceedings with as little formality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the Tribunal permit.

- 10 (2) Subject to this Act, a Tribunal may regulate its own procedure.

PART 11

MISCELLANEOUS

**Groundless threats of legal proceedings for copyright infringement**

- 15 **499.**—(1) This section applies where a person (*X*) threatens another person (*Y*) with any proceedings in respect of an infringement of copyright.

(2) *Y* or any aggrieved person may bring an action in the Court against *X*.

- 20 (3) In an action under subsection (2), the claimant may —

- (*a*) obtain a declaration to the effect that the threat is unjustifiable;  
 (*b*) obtain an injunction against the continuance of the threat;  
 and

- 25 (*c*) recover such damages (if any) as the claimant has sustained.

(4) Subsection (3) does not apply if *X* proves that the acts in respect of which *X* has threatened proceedings are (or would, if done, be) an infringement of copyright.

(5) To avoid doubt, *X* may, in an action under subsection (2), make a counterclaim for an infringement of copyright.

(6) This section does not make an advocate and solicitor liable for anything done by him or her in his or her professional capacity on behalf of a client. 5

(7) For the purposes of this section —

(a) it does not matter whether the threat is made by a circular, an advertisement or otherwise;

(b) it does not matter whether *X* is or is not the owner or an exclusive licensee of the copyright concerned; and 10

(c) the mere notification of the existence of a copyright is not a threat of proceedings.

### **Offences by bodies corporate, etc.**

**500.**—(1) Where an offence under this Act committed by a body corporate is proved — 15

(a) to have been committed with the consent or connivance of an officer of the body corporate; or

(b) to be attributable to any neglect on his or her part,

the officer as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly. 20

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

(3) Where an offence under this Act committed by a partnership is proved — 25

(a) to have been committed with the consent or connivance of a partner; or

(b) to be attributable to any neglect on his or her part,

the partner as well as the partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly. 30

(4) Where an offence under this Act committed by an unincorporated association (other than a partnership) is proved —

(a) to have been committed with the consent or connivance of an officer of the unincorporated association or a member of its governing body; or

(b) to be attributable to any neglect on the part of such an officer or member,

the officer or member as well as the unincorporated association shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(5) In this section —

“body corporate” includes a limited liability partnership as defined by section 4(1) of the Limited Liability Partnerships Act;

“officer” —

(a) in relation to a body corporate — means any director, partner, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity; or

(b) in relation to an unincorporated association (other than a partnership) — means the president, the secretary, or any member of the committee of the unincorporated association, or any person holding a position analogous to that of president, secretary or member of such a committee and includes any person purporting to act in any such capacity;

“partner” includes a person purporting to act as a partner.

(6) The Minister may make regulations to provide for the application of any provision of this section, with such modifications as the Minister considers appropriate, to a body corporate or an unincorporated association formed or recognised under the law of a territory outside Singapore.

## **Jurisdiction of courts**

**501.**—(1) Despite the Criminal Procedure Code, a District Court or a Magistrate’s Court has jurisdiction to try any offence under this Act or the 1987 Act and has power to impose the full punishment for any such offence. 5

(2) Subject to subsection (1), the General Division of the High Court is the court that has jurisdiction in matters under this Act and the 1987 Act.

(3) Subsection (2) does not affect any proceedings brought before the date of its commencement. 10

## **Application of Government Proceedings Act**

**502.** To avoid doubt, it is declared that section 12 of the Government Proceedings Act (which relates to infringements of industrial property by employees or agents of the Government) applies to copyright under this Act. 15

## **Application of Electronic Transactions Act**

**503.** To avoid doubt, section 26(1) of the Electronic Transactions Act (which relates to the limitation of liability against network service providers) applies in relation to any civil or criminal liability under this Act other than liability in respect of a rights infringement. 20

## **Immunity of officers and employees of Government and IPOS**

**504.** No liability shall lie against any officer or employee of the Government or of IPOS for anything done or omitted to be done —

(a) in good faith and with reasonable care; and

(b) in the exercise or purported exercise of any power, duty or function under this Act. 25

## **Regulations**

**505.**—(1) The Minister may make regulations —

(a) to prescribe anything that is required or permitted to be prescribed by this Act; and 30

(b) generally for the purposes of this Act.

(2) Without limiting subsection (1), regulations may provide for —

(a) the keeping and retention of records and declarations in relation to copies of works made by libraries, archives or institutions;

(b) the deposit of such records and declarations with persons appointed by the Minister; and

(c) the fees payable in respect of any application or matter under this Act.

## 10 **Repeal of Copyright Act**

**506.**—(1) The Copyright Act is repealed.

(2) To avoid doubt, section 16 of the Interpretation Act applies in relation to the repeal of the Copyright Act.

## **Related and consequential amendments, etc.**

15 **507.**—(1) Section 89(1)(x) of the Customs Act (Cap. 70, 2004 Ed.) is amended by deleting the words “section 140EB or 140LE of the Copyright Act” and substituting the words “section 353 of the Copyright Act 2021”.

20 (2) Section 26 of the Electronic Transactions Act (Cap. 88, 2011 Ed.) is amended —

(a) by deleting paragraph (d) of subsection (2) and substituting the following paragraph:

25 “(d) any liability of a network service provider under the Copyright Act 2021 in respect of a rights infringement as defined by section 97 of that Act.”; and

(b) by deleting the definitions of “performance” and “protection period” in subsection (3).

30 (3) Part 2 and section 37 of the Intellectual Property (Dispute Resolution) Act 2019 (Act 23 of 2019) are repealed.

(4) The Intellectual Property Office of Singapore Act (Cap. 140, 2002 Ed.) is amended —

- (a) by deleting the words “Part VII of the Copyright Act (Cap. 63)” in the definition of “Copyright Tribunal” in section 2 and substituting the words “Part 10 of the Copyright Act 2021”; 5
- (b) by deleting the words “Copyright Act (Cap. 63)” in section 6(1)(b) and substituting the words “Copyright Act 2021”; and
- (c) by inserting, immediately after item 4 in the Third Schedule, the following item: 10

“5. Part 9, Division 2 of the Copyright Act 2021.”.

(5) Section 108(6) of the Patents Act (Cap. 221, 2005 Ed.) is amended by deleting the words “Copyright Act (Cap. 63)” and substituting the words “Copyright Act 2021”. 15

(6) The Registered Designs Act (Cap. 266, 2005 Ed.) is amended —

- (a) by deleting the definition of “artistic work” in section 2(1) and substituting the following definition: 20
  - ““artistic work” has the meaning given by section 20(1) of the Copyright Act 2021;”;
- (b) by deleting the words “Copyright Act (Cap. 63)” in sections 22(1)(a) and 45(6) and substituting in each case the words “Copyright Act 2021”; and
- (c) by deleting subsection (3) of section 77 and substituting the following subsection: 25

“(3) For a period of 2 years after the date of commencement of any provision of the Copyright Act 2021, the Minister may, by rules, prescribe such transitional provisions in relation to that Act as the Minister may consider necessary or expedient.”. 30

(7) Section 31(1)(viii*a*) of the Regulation of Imports and Exports Act (Cap. 272A, 1996 Ed.) is amended by deleting the words “section 140EB or 140LE of the Copyright Act” and substituting the words “section 353 of the Copyright Act 2021”.

5 (8) Section 29 of the Supreme Court of Judicature (Amendment) Act 2019 (Act 40 of 2019) is amended by deleting subsection (2).

(9) Section 2 of the Undesirable Publications Act (Cap. 338, 1998 Ed.) is amended by deleting the definitions of “broadcast” and “broadcasting” and substituting the following definitions:

10 ““broadcast” has the meaning given by section 27 of the Copyright Act 2021 and “broadcasting” has a corresponding meaning;”.

(10) The Copyright Act 2021 is amended —

15 (a) by deleting the definition of “Court” in section 7(1) and substituting the following definition:

““Court” means the General Division of the High Court;”;

20 (b) by deleting the words “General Division of the High Court” wherever they appear in the following provisions and substituting in each case the word “Court”:

Sections 325(1) and (2), 326(5), 327(1) and (2) and 494(1), (3)(c), (5)(a) and (b) and (6); and

25 (c) by deleting the words “General Division of High Court” in the section heading of section 494 and substituting the word “Court”.



## PART 12

## TRANSITIONAL

*Division 1 — Preliminary***References in laws and documents to predecessor Acts and copyright thereunder**

5

**508.**—(1) Without affecting the other provisions of this Part —

(a) a reference in any law or document to a provision of a predecessor Act is to be read as a reference (or as including a reference) to the corresponding provision of this Act;

(b) if, apart from this Act, a reference in any law or document to copyright would be read as a reference to copyright under a predecessor Act, the reference is to be read as a reference (or as including a reference) to copyright under this Act;

10

(c) if, apart from this Act, a reference in any law or document to any subject matter in which copyright subsists would be read as a reference to the subject matter in which copyright subsisted under a predecessor Act, the reference is to be read as a reference (or as including a reference) to the subject matter in which copyright subsists under this Act; and

15

(d) a reference in any law or document to the grant of an interest in copyright by licence is to be read, in relation to copyright under this Act, as a reference to the grant of a licence in respect of that copyright.

20

(2) Subsection (1) is subject to any contrary intention in the law or document.

(3) In this section —

“document” means a contract, an agreement or any other instrument;

30

“law” means any written law other than this Act;

“predecessor Act” means the 1911 Act or the 1987 Act.

*Division 2 — Works, acts, etc., before 1 July 1912***Interpretation of this Division and Division 3**

**509.**—(1) Wherever it is expressly so provided in this Division and Division 3 —

5 “deliver”, in relation to a lecture, includes deliver by means of a mechanical instrument;

“dramatic work” includes —

(a) a piece for recitation;

10 (b) a choreographic work or an entertainment in dumb show the scenic arrangement or acting form of which is fixed in writing or otherwise; and

(c) a cinematograph production where the arrangement, the acting form or the combination of incidents represented gives the work an original character;

15 “lecture” includes an address, a speech and a sermon;

“literary work” includes a map, chart, plan, table and compilation;

“perform”, in relation to a dramatic work as defined by this section or a musical work —

20 (a) means to make an acoustic representation of the work or a visual representation of a dramatic action in the work; and

(b) includes such a representation made by means of a mechanical instrument;

25 “photograph” includes photo-lithograph and a work produced by a process similar to photography.

(2) For the purposes of this Division and Division 3, if an authorial work, a sound recording or a film is made over a period of time, the work, recording or film is deemed not to have been made before  
30 10 April 1987 unless the period of time ended before that date.

### **What is a substituted right**

**510.** In this Division, “substituted right” means a right conferred by section 24 of the 1911 Act in place of a right subsisting immediately before 1 July 1912.

### **No copyright in authorial works made before 1 July 1912 unless there is substituted right**

5

**511.** Despite sections 516 and 517, sections 109 and 110 (copyright in authorial works) do not confer any copyright on an authorial work made before 1 July 1912 unless a substituted right subsisted in the work immediately before 10 April 1987.

10

### **Scope of copyright in dramatic or musical works made before 1 July 1912 depends on scope of substituted right**

**512.—(1)** Where a substituted right in relation to a dramatic or musical work made before 1 July 1912 did not include the sole right to perform the work in public, any copyright subsisting in the work under this Act does not include performing rights.

15

(2) Where a substituted right in relation to a dramatic or musical work made before 1 July 1912 consisted only of the sole right to perform the work in public, any copyright subsisting in the work under this Act consists only of performing rights.

20

(3) In this section, “performing rights”, in relation to a dramatic or musical work, means —

- (a) the exclusive right to perform the work, or an adaptation of the work, in public;
- (b) the exclusive right to broadcast the work or an adaptation of the work; and
- (c) the exclusive right to cause the work, or an adaptation of the work, to be in a cable programme service.

25

**Copyright in contributions to periodicals made before 1 July 1912 subject to author's right to publish in separate form**

**513.**—(1) This section applies where —

- 5 (a) an authorial work made before 1 July 1912 consists of an essay, article or item that is part of, and first published in —
- (i) a review, magazine or other periodical; or
  - (ii) a similar work; and
- 10 (b) immediately before 10 April 1987, the author of the authorial work was entitled to a right of publishing the authorial work in a separate form by virtue of the note to the First Schedule to the 1911 Act.

(2) Any copyright in the authorial work under this Act is subject to the author's right mentioned in subsection (1)(b).

**Assignments and grants made before 1 July 1912**

15 **514.**—(1) This section applies where —

- (a) under this Act, copyright subsists in an authorial work made before 1 July 1912; and
  - (b) the author of the work had, before 1 July 1912, made an assignment, or a grant, of a kind mentioned in paragraph (a) of the proviso to section 24(1) of the 1911 Act (called in this section the 1911 provision).
- 20

(2) If —

- (a) an event occurred, or a notice was given, before 10 April 1987; and
  - (b) under the 1911 provision, the event or notice would have —
    - (i) affected the ownership of the substituted right in the authorial work; or
- 25

- (ii) created, transferred or terminated an interest, a right or a licence in the substituted right,

the event or notice has the same effect in relation to any copyright in the authorial work under this Act.

(3) If, by virtue of the 1911 provision and but for the repeal of the 1911 Act, a right would have been exercisable on or after 10 April 1987 — 5

- (a) in respect of the authorial work; or

- (b) in relation to the substituted right in the authorial work,

the right continues to be exercisable in respect of the authorial work or in relation to the substituted right in the work, as the case may be. 10

(4) If —

- (a) under the 1911 provision, the substituted right in the authorial work would have reverted to the author or the author's personal representatives on the date mentioned in the relevant paragraph; and 15

- (b) that date occurs on or after 10 April 1987,

then, on that date —

- (c) the copyright in the authorial work under this Act reverts to the author or the author's personal representatives, as the case may be; and 20

- (d) if any other person has an interest in that copyright immediately before that date by virtue of any document made before 1 July 1912, that interest ceases.

(5) This section does not limit section 524. 25

*Division 3 — Works, acts, etc., before 10 April 1987*

**Authorial works first published before 10 April 1987 — no revival of copyright expiring before 10 April 1987**

**515.**—(1) This section applies to an authorial work —

- (a) first published before 10 April 1987; but 30

(b) made on or after 1 July 1912.

(2) Division 2 of Part 3 does not confer any copyright on the work unless copyright subsisted in the work under the 1911 Act immediately before 10 April 1987.

5 **Authorial works made before 10 April 1987 — modifications to section 109**

**516.**—(1) In relation to an authorial work made before 10 April 1987, a reference in section 109 (copyright in unpublished authorial works) to a qualified individual includes a reference to —

10 (a) a British subject; and

(b) a person domiciled in a country to which the 1911 Act extended.

(2) This section is subject to section 515.

15 **Authorial works first published before 10 April 1987 — modifications to section 110**

**517.**—(1) In relation to an authorial work first published before 10 April 1987 —

(a) a reference to Singapore in section 110 (copyright in published authorial works) includes a reference to a country to which the 1911 Act extended; and

20

(b) section 110(1)(a)(i) and (2)(b)(i) does not apply.

(2) This section is subject to section 515.

**Photographs taken before 10 April 1987 — who is the author**

25 **518.** For the purposes of this Act, the author of a photograph taken before 10 April 1987 is the person who, when the photograph was taken, owned the material on which the photograph was taken.

**Photographs taken before 10 April 1987 — duration of copyright**

30 **519.**—(1) This section applies to a photograph taken before 10 April 1987.

(2) Sections 114 and 115 (duration of copyright in authorial works) do not apply to the photograph.

(3) Subject to any earlier expiration under section 110(1) as modified by sections 516 and 517, any copyright in the photograph by virtue of Division 2 of Part 3 expires 70 years after the end of the year in which the photograph was taken. 5

**Artistic works made before 10 April 1987 — no copyright if work is a registrable design**

**520.** This Act does not confer any copyright on an artistic work made before 10 April 1987 if the work, when it was made — 10

- (a) was a design capable of being registered under the Patents and Designs Act 1907 of the United Kingdom (U.K. 1907, c. 29); and
- (b) was used, or intended to be used, as a model or pattern to be multiplied by an industrial process. 15

**Sound recordings made or first published before 10 April 1987 — modifications to section 120**

**521.** In relation to a sound recording made before 10 April 1987, a reference in section 120(a) (copyright in sound recordings) to a qualified individual includes a reference to — 20

- (a) a reference in section 120(a) (copyright in sound recordings) to a qualified individual includes a reference to —
  - (i) a British subject; and
  - (ii) a person domiciled in a country to which the 1911 Act extended; 25
- (b) despite section 120(b)(i), copyright does not subsist in the recording just because it was made in Singapore; and
- (c) for the purposes of section 120(b)(i), the recording is to be treated as first published in Singapore if it is first published in any country to which the 1911 Act extended. 30

**Sound recordings made before 10 April 1987 — duration of copyright**

**522.**—(1) This section applies where —

- (a) a sound recording was made before 10 April 1987; and
- 5 (b) copyright subsists in a sound recording by virtue of section 120 (copyright in sound recordings) as modified by section 521.

(2) Section 122 (duration of copyright in sound recordings) does not apply.

- 10 (3) The copyright expires 70 years after the end of the year in which the recording was made.

**Films made before 10 April 1987 — treatment**

**523.**—(1) This section applies to a film that was made before 10 April 1987.

- 15 (2) If the film is a dramatic work as defined by section 509(1) —
  - (a) the film is to be treated as an original dramatic work for the purposes of this Act; and
  - (b) the author of the film (as a dramatic work) is the person who would be the author of the film under the 1911 Act.

- 20 (3) This Act applies to a photograph forming part of the film as it applies to a photograph that does not form part of a film.

**Assignments and licences made before 10 April 1987 in relation to authorial works, sound recordings and films to have similar effect**

25 **524.**—(1) This section applies where —

- (a) under this Act, copyright subsists in a work, being —
  - (i) an authorial work;
  - (ii) a sound recording; or
  - (iii) a film;



(b) a document was made, or an event occurred, before 10 April 1987; and

(c) the document or event —

(i) affected the ownership of the copyright in the work under the 1911 Act; 5

(ii) created, transferred or terminated an interest, a right or a licence in the copyright in the work under the 1911 Act; or

(iii) would have had the effect mentioned in sub-paragraph (i) or (ii) if the 1911 Act had continued in force. 10

(2) Subject to subsections (3) and (4) and section 525, the document or event has the same effect in relation to the copyright in the work under this Act.

(3) If the effect of the document was or would have been limited to a period specified in the document, the document does not have any effect in relation to the copyright under this Act except insofar as the period extends after 10 April 1987. 15

(4) In determining the effect of a document for the purposes of this section and section 525 — 20

(a) an expression in the document has the meaning it had immediately before 10 April 1987 (whether or not it would have a different meaning under this Act or the 1987 Act); and

(b) section 140 (assignment of future copyright) does not apply. 25

(5) In this section, a reference to copyright in a work under the 1911 Act is to be read as —

(a) in relation to a sound recording — a reference to copyright under that Act in records embodying the recording; and 30

(b) in relation to a film — a reference to copyright under that Act in —

- (i) the film (insofar as it is a dramatic work for the purposes of that Act); or
- (ii) photographs forming part of the film.

**Authorial works made before 10 April 1987 — copyright reverts to author's estate 25 years after death**

**525.**—(1) Subject to subsection (5), this section applies where —

- (a) an authorial work was made before 10 April 1987; and
- (b) the author was the first owner of the copyright in the work under this Act.

(2) If —

- (a) the author assigned, or granted an interest in, the copyright; and

(b) the assignment or grant —

(i) was made at any time after 1 July 1912 and before 10 April 1987;

(ii) was not by will; and

(iii) would have effect in relation to the copyright by virtue of section 524,

the assignment or grant does not give the assignee or grantee any rights beyond the expiry of 25 years after the death of the author.

(3) On the author's death, the reversionary interest in the copyright expectant on the expiry of 25 years after the death of the author devolves, despite any contrary agreement, to the legal personal representative of the author as part of the author's estate.

(4) Any agreement entered into by the author is void to the extent that it purports to dispose of the interest that devolves under subsection (3).

(5) This section does not apply to —

(a) the assignment of the copyright in a collective work; or

(b) a licence to publish a work or a part of a work as part of a collective work.

- (6) This section does not limit section 524.
- (7) In this section, “collective work” means —
- (a) an encyclopaedia, a dictionary, a year book or a similar authorial work;
  - (b) a newspaper, review, magazine or similar periodical; or 5
  - (c) an authorial work written in distinct parts by different authors, or in which authorial works or parts of authorial works of different authors are incorporated.

**Bequests by author who died before 10 April 1987**

- 526.**—(1) Subsection (2) applies where — 10
- (a) the author of an authorial work has died before 10 April 1987;
  - (b) a person has acquired, under the author’s will, the ownership of a manuscript of the work; and
  - (c) the work — 15
    - (i) has not been published;
    - (ii) in the case of a dramatic or musical work — has not been performed in public; and
    - (iii) in the case of a lecture — has not been delivered in public. 20

(2) Unless the contrary is proved, the person is presumed to own any copyright in the work.

(3) In this section, an expression that is defined by section 509 has the meaning given to it by that section and not the meaning, if any, given to it by Part 2. 25

**Reproduction of authorial work published before 10 April 1987 upon payment of royalties**

**527.**—(1) It is a permitted use for a person (*X*) to make a copy of an authorial work for sale if —

- (a) the work was published before 10 April 1987; 30

- (b) the copy was made after the relevant date;
- (c) before 10 April 1987, *X* gave the written notice, as prescribed for the purposes of the proviso to section 3 of the 1911 Act, of *X*'s intention to reproduce the work; and
- 5 (d) *X* has paid to or for the benefit of the copyright owner royalties —
  - (i) in respect of all the copies sold by *X*;
  - (ii) calculated at the rate of 10% of the price at which *X* published the reproduction; and
  - 10 (iii) in the manner prescribed for the purposes of the proviso to section 3 of the 1911 Act or for the purposes of this section.

(2) The relevant date for the purposes of subsection (1)(b) is as follows:

- 15 (a) in the case of a work in which copyright subsisted on 1 July 1912 —
  - (i) if the work is a work of joint authorship, the later of the following dates:
    - 20 (A) the date falling 30 years after the death of the joint author who died first;
    - (B) the date of the death of the joint author who died last; and
  - (ii) if not — 30 years after the death of the author;
- (b) in any other case —
  - 25 (i) if the work is a work of joint authorship, the later of the following dates:
    - (A) the date falling 25 years after the death of the joint author who died first;
    - (B) the date of the death of the joint author who
    - 30 died last; and
  - (ii) if not — 25 years after the death of the author.

## (3) If —

(a) copyright subsists in a literary, dramatic or musical work or an engraving at the date of the death of the author (or the death of the joint author of the work who died last); and

(b) when the author (or joint author) died —

(i) the work or engraving had not been published;

(ii) in the case of a dramatic or musical work — the work had not been performed in public; and

(iii) in the case of a lecture — the lecture had not been delivered in public,

the author (or joint author) is deemed to have died, for the purposes of this section, on the date on which —

(c) in the case of a literary work (other than a lecture) or an engraving — the work was first published;

(d) in the case of a dramatic or musical work — the work was first published or first performed in public, whichever first happened; or

(e) in the case of a lecture — the lecture was first published or first delivered in public, whichever first happened.

## (4) Regulations may —

(a) provide for the manner in which, and the times at which, royalties are to be paid for the purposes of subsection (1)(d); and

(b) include provision requiring payment in advance, or otherwise securing the payment of those royalties.

(5) In this section, an expression that is defined by section 509 has the meaning given to it by that section and not the meaning, if any, given to it by Part 2.

*Division 4 — Commercial rental arrangements in respect of  
copies bought before 16 April 1998*

**Copies of computer programs bought before 16 April 1998**

5 **528.** Section 112(1)(g) (nature of copyright in literary, dramatic and musical works) does not extend to entering into a commercial rental arrangement in respect of a computer program if —

(a) the copy of the program was bought by a person (*X*) before 16 April 1998;

(b) the copy is not an infringing copy;

10 (c) the commercial rental arrangement is made in the ordinary course of a business conducted by *X*; and

(d) when *X* bought the copy, *X* was conducting the same business or another business that involved making commercial rental arrangements in respect of copies of computer programs.

**Copies of sound recordings bought before 16 April 1998**

20 **529.** Section 121(a)(ii) (nature of copyright in sound recordings) does not extend to entering into a commercial rental arrangement in respect of a sound recording if —

(a) the copy of the recording was bought by a person (*X*) before 16 April 1998;

(b) the copy is not an infringing copy;

(c) the commercial rental arrangement is made in the ordinary course of a business conducted by *X*; and

25 (d) when *X* bought the copy, *X* was conducting the same business or another business that involved making commercial rental arrangements in respect of copies of sound recordings.

*Division 5 — Copyright and protection  
expiring before 1 July 2004*

**No revival or extension of copyright in authorial work, sound recording or film expiring before 1 July 2004**

**530.**—(1) This section applies where, under the provisions of the 1987 Act in force immediately before 1 July 2004, the copyright in an authorial work, a sound recording or a film expired before that date. 5

(2) Part 3 and sections 519 and 522 do not apply to revive or extend the copyright.

**No revival or extension of protection for performances ceasing to be protected before 1 July 2004** 10

**531.**—(1) This section applies where —

- (a) a performance was given before 1 July 2004; and
- (b) the protection period of the performance, as defined in section 246(1) of the 1987 Act in force immediately before 1 July 2004, expired before that date. 15

(2) Part 4 does not apply to revive or extend the protection of the performance.

*Division 6 — Assignments and licences  
before 1 January 2005* 20

**Assignments and licences made before 1 January 2005 and relating to broadcasting and cable programmes**

**532.**—(1) This section applies to any licence, contract or arrangement (including any assignment of copyright) that —

- (a) has been granted or entered into before 1 January 2005; 25  
and
- (b) relates to —
  - (i) the broadcast of a work; or
  - (ii) the inclusion of a work in a cable programme.

(2) Subject to any contrary intention, the licence, contract or arrangement continues to have effect in accordance with the 1987 Act in force immediately before 1 January 2005.

*Division 7 — Works, performances, acts, etc.,  
before appointed day*

**No revival or extension of copyright in authorial work, sound recording or film expiring before appointed day**

533.—(1) This section applies where, under the provisions of the 1987 Act in force immediately before the appointed day, the copyright in an authorial work, a sound recording or a film expired before that date.

(2) Part 3 does not apply to revive or extend the copyright in the work.

**Assignments and licences of copyright made on or after 10 April 1987 and before appointed day to have similar effect**

534.—(1) This section applies where —

- (a) copyright subsists in a work under this Act;
- (b) a document was made, or an event occurred, on or after 10 April 1987 and before the appointed day; and
- (c) the document or event —
  - (i) affected the ownership of the copyright in the work under the 1987 Act;
  - (ii) granted, modified or ended a licence in the copyright in the work under the 1987 Act; or
  - (iii) would have had the effect mentioned in sub-paragraph (i) or (ii) if the 1987 Act had continued in force.

(2) Subject to subsections (3) and (4), the document or event has the same effect in relation to the copyright in the work under this Act.

(3) If the effect of the document was or would have been limited to a period specified in the document, the document does not have any



effect in relation to the copyright under this Act except insofar as the period extends after the appointed day.

(4) In determining the effect of a document for the purposes of this section, an expression in the document has the meaning it had immediately before the appointed day (whether or not it would have a different meaning under this Act).

5

**Assignments of performers' rights made before appointed day to have similar effect**

**535.**—(1) This section applies where —

- (a) a performance is protected under this Act;
- (b) a document was made, or an event occurred, before the appointed day; and
- (c) the document or event —
  - (i) affected the person who may bring an action for an unauthorised use of the performance under the 1987 Act; or
  - (ii) would have had that effect if the 1987 Act had continued in force.

10

15

(2) Subject to subsections (3) and (4), the document or event has the same effect in relation to the performance under this Act.

20

(3) If the effect of the document was or would have been limited to a period specified in the document, the document does not have any effect in relation to the performance under this Act unless the period extends after the appointed day.

(4) In determining the effect of a document for the purposes of this section, an expression in the document has the meaning it had immediately before the appointed day (whether or not it would have a different meaning under this Act).

25

**Photographs taken on or after 10 April 1987 and before appointed day — who is the author**

5 **536.** For the purposes of this Act, the author of a photograph taken on or after 10 April 1987 but before the appointed day is the person who took the photograph.

**Photographs taken on or after 10 April 1987 and before appointed day — presumptions relating to authorship**

**537.**—(1) This section applies in —

- 10 (a) an action for copyright infringement in respect of a photograph taken on or after 10 April 1987 but before the appointed day; and
- (b) an application for an access disabling order under section 325 in relation to that infringement.

15 (2) A person (*X*) is presumed to have taken the photograph if it is proved that, when the photograph was taken, *X* owned the material on which the photograph was taken.

(3) A person (*Y*) is presumed to have taken the photograph if —

- 20 (a) it is not proved who owned the material on which the photograph was taken when it was taken; and
- (b) it is proved that, when the photograph was taken, *Y* owned the apparatus by which the photograph was taken.

(4) A person (*Z*) is presumed to have taken the photograph if —

- (a) it is not proved —
- 25 (i) who owned the material on which the photograph was taken when it was taken; and
- (ii) who owned the apparatus by which the photograph was taken when it was taken; and
- (b) it is proved that —
- (i) *Z* owned the photograph when *Z* died; or

- (ii) if it is not proved who owned the photograph when *Z* died — the photograph was in *Z*'s possession or custody when *Z* died.

(5) Subsections (2), (3) and (4) do not apply if the contrary is proved.

5

### **Editions of authorial works published by Government before appointed day — no infringement of Government copyright**

**538.**—(1) This section applies where copyright subsists in an edition of an authorial work published before the appointed day, but only by virtue of section 117(1)(b)(ii).

10

(2) To avoid doubt, no act done before the appointed day is an infringement of that copyright.

### **Deciding equitable remuneration payable under 1987 Act**

**539.**—(1) This section applies where a person (*X*) is liable, under a provision of the 1987 Act, to pay equitable remuneration to another person (*Y*) of an amount to be —

15

- (a) agreed between *X* and *Y*; or
- (b) in default of agreement, to be decided by a Copyright Tribunal constituted under that Act.

(2) For the purposes of *X*'s liability —

20

- (a) an agreement between *X* and *Y* may be made before, on or after the appointed day; and
- (b) in default of agreement, the amount of equitable remuneration payable by *X* is to be decided by a Copyright Tribunal constituted under this Act.

25

(3) For the purposes of section 54(15)(b) of the 1987 Act, the relevant request in writing may be made before, on or after the appointed day.

## Copyright Tribunals constituted under 1987 Act

**540.** A Copyright Tribunal constituted under the 1987 Act to hear and determine any matter is deemed to be constituted under Part 10 of this Act and may continue to hear and determine the matter.

### 5 **Saving and transitional provision**

**541.**—(1) Any subsidiary legislation made under the 1987 Act and in force immediately before the appointed day continues in force, so far as it is not inconsistent with the provisions of this Act, as if made under this Act until it is revoked by subsidiary legislation made under  
10 this Act.

(2) For a period of 2 years after the date of commencement of any provision of this Act, the Minister may, by regulations, prescribe such additional provisions of a saving or transitional nature consequent on the enactment of that provision as the Minister may consider  
15 necessary or expedient.

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## EXPLANATORY STATEMENT

This Bill repeals and re-enacts the Copyright Act (Chapter 63 of the 2006 Revised Edition) (the 1987 Act).

The Bill makes changes to the law to —

- (a) give effect to Singapore's international obligations in relation to the scope and duration of copyright;
- (b) update and rationalise the law governing the first owners of copyright;
- (c) rationalise the law on the protection of performances and related rights;
- (d) update the permitted uses of copyright works and protected performances to reflect changes in technology and changes in the needs of different users;
- (e) confer on authors and performers the moral right to be identified; and
- (f) regulate collective management organisations.

The Bill also seeks to make the law easier to understand by —

- (a) using plain English, shorter sentences and more paragraphing;

- (b) using explanations and illustrations where appropriate; and
- (c) reorganising the contents of the law in a more logical manner, in particular by —
  - (i) consolidating the provisions governing copyright in literary, dramatic, musical and artistic works with the provisions governing copyright in other subject matters; and
  - (ii) consolidating similar provisions governing both copyright works and protected performances.

To the extent that the provisions of the Bill express the ideas in the 1987 Act in a different form of words for the purpose of using a clearer style, the ideas are not taken to be different just because different forms of words are used: see section 9B of the Interpretation Act.

The Bill also makes related and consequential amendments to certain other Acts.

## PART 1

### PRELIMINARY

Clause 1 relates to the short title and commencement. Most of the provisions of the Bill must be brought into operation on the same day (the appointed day).

Clause 2 provides for the Act to apply to a thing existing on the appointed day as it applies to a thing coming into existence after that day. For example, under clause 109, copyright subsists in an authorial work made by a Singapore citizen, whether the work was made before or after the appointed day. Clause 2 is subject to provisions of the Bill that expressly provide for a different temporal scope of application. For example, clause 134, which provides for the first owner of copyright arising in the course of employment, does not apply to non-authorial works made before the appointed day.

Clause 3 provides for the Bill to be extended to reciprocating countries.

Clause 4 provides for the exclusion of non-reciprocating countries and their nationals from the Bill.

Clause 5 preserves the operation of other laws.

Clause 6 provides for the Bill to bind the Government. However, the Government is not liable to be prosecuted for an offence under the Bill.

## PART 2

## INTERPRETATION

Part 2 (clauses 7 to 105) defines words, expressions and concepts that are used across the Bill. It is organised thematically.

Several expressions and concepts in the 1987 Act are simplified. New expressions and concepts have also been introduced to aid and simplify the redrafting of the substantive provisions. The more important changes are as follows:

- (a) in relation to copyright in works —
  - (i) “work” is used to refer to all subject matters in which copyright may subsist (clause 8);
  - (ii) “authorial work” is used (instead of “work”) to refer to literary, dramatic, musical or artistic works (clause 9);
  - (iii) the concept of an authorial work with (or without) an identified author replaces the concept of an authorial work that is not (or is) anonymous or pseudonymous (clause 12);
  - (iv) “work of dance or mime” is used instead of “choreographic or other dumb show” (clause 15(1)(a) and (2));
  - (v) “film” is used instead of “cinematograph film”, and simpler terms are used to refer to the components of a film (clause 24); and
  - (vi) “copy” is used to refer to a reproduction of literary, dramatic, musical and artistic works; a reproduction of a published edition of those works; a film of a television broadcast or cable programme; and a sound recording of a broadcast or cable programme (Subdivision (2) of Division 3);
- (b) in relation to the protection of performances —
  - (i) “protected performance” is used instead of longer expressions such as “a performance, the protection period of which has not expired” (clause 7); and
  - (ii) “infringing use” is used (instead of “unauthorised use”) to refer to acts that infringe the protection of a performance (clauses 175 and 176);
- (c) in relation to both copyright works and protected performances —
  - (i) “commercial dealing” is used to refer to various commercial acts, such as sale, letting for hire, and distribution for the purpose of trade (clause 73);

- (ii) “rights owner” refers to a copyright owner or the person who is entitled to bring an action for an infringing use of a protected performance (clause 96);
- (iii) “rights infringement” refers to an infringement of copyright or an infringing use of a protected performance (clause 97); and
- (iv) “infringing copy” is extended to also refer to a recording of a protected performance that is made in Singapore in circumstances that constitute an infringing use, or made outside Singapore and imported without the consent of the rights owner (clause 98).

Certain substantive changes are also made as follows:

- (a) works of dance or mime made on or after the appointed day are dramatic works even if they are not described in writing (clause 15(1));
- (b) for photographs taken after the appointed day, there is no longer a definition of “author”, in line with the approach for other authorial works. There is likewise no longer any presumption relating to the authorship of such photographs;
- (c) Subdivision (3) of Division 3 makes the following changes to the concept of publication in section 24 of the 1987 Act, which applies to authorial works, editions of authorial works, sound recordings and films:
  - (i) it is made clear that the specified circumstances constituting publication are exhaustive;
  - (ii) it is made clear that the supply of copies to the public over the Internet constitutes publication;
  - (iii) it is provided that the supply of copies of a film to the public constitutes publication, bringing the position for films in line with the position for authorial works and sound recordings;
  - (iv) however, the effect of acts done before the appointed day will continue to be determined in accordance with section 24 of the 1987 Act;
- (d) clause 91 introduces the concept of a “public collection”. This refers to the National Archives, the prescribed collections of the National Heritage Board, the permanent collections of libraries, and archives. Museums and galleries are examples of institutions that could have archives.

## PART 3

## COPYRIGHT IN WORKS

Part 3 (clauses 106 to 171) provides for copyright in works. It consolidates the following provisions of the 1987 Act:

- (a) the provisions in Divisions 1, 2 and 11 of Part III, and section 40A (relating to copyright in literary, dramatic, musical and artistic works);
- (b) the provisions in Divisions 2, 3, 4, 5 and 7 of Part IV, and sections 103, 104, 105 and 116A (relating to copyright in other subject matters);
- (c) the provisions in Divisions 2, 3, 4 and 8 of Part V, and section 119 (relating to actions for copyright infringement);
- (d) sections 185, 194, 195, 196 and 197 (miscellaneous provisions);
- (e) some aspects of the transitional provisions in Part XI, to the extent that they remain relevant and can be conveniently incorporated into the main provisions (for example, section 234(1) of the 1987 Act, which provides that copyright does not subsist in an authorial work made before 10 April 1987 by or under the direction or control of a prescribed international organisation, is incorporated into clause 109(1)(b)(iii)(B).

The following substantive changes are also made.

Clause 107 clarifies that copyrights subsist independently.

Clause 108(1)(b) declares the orthodox position that copyright does not confer on the copyright owner any positive right to do the acts comprised in the copyright. This overrules the holding of the Court of Appeal in *Lee Wei Ling and another v Attorney-General* [2017] SGCA 48 at [61] that copyright extends to positive rights.

Under clause 113(b), the right of first publication in respect of an artistic work no longer extends to countries other than Singapore. This brings the right in line with the territorial nature of copyright.

Clause 117(1)(b)(ii) provides for copyright to subsist in editions of authorial works published by or under the direction or control of the Government.

Clause 121(b) provides for copyright in a sound recording to include the right to be paid equitable remuneration if the recording has been published for commercial purposes and a person causes the embodied sounds to be heard in public. A failure to pay equitable remuneration in these circumstances is an infringement of copyright (clause 151). Separately, the right to make a sound recording available to the public through a digital audio transmission is replaced with the right to communicate a sound recording to the public. These changes give



effect to Singapore's obligations in this regard under the European Union — Singapore Free Trade Agreement.

Clause 124(c) provides for copyright in a film to also include the exclusive right to cause any sounds of the film to be heard in public.

Clauses 114, 122 and 125 change the rules governing the duration of copyright in authorial works, sound recordings and films. Under the new rules in the Bill, copyright in these works will be of finite duration, whether or not they are published. For authorial works with identified authors, copyright subsists for life plus 70 years. For authorial works without identified authors, sound recordings and films, the duration of copyright depends on whether they are made available to the public within 50 years after they are made; they will enjoy longer copyright durations if so, shorter durations if not. Under transitional provisions, works that are made available to the public by 31 December 2022 are also treated similarly.

Clauses 133 to 136 provide for the first owner of copyright as follows:

- (a) the default rule is that the creator of a work is the first owner of any copyright in the work. This is subject to the following exceptions;
- (b) the employer is the first owner of any copyright in any work created on or after the appointed day by an employee in the course of employment (subject to certain exceptions relating to journalists). For works created before the appointed day, the position under the 1987 Act is preserved: the employer is the first owner of any copyright in authorial works, while the first owner of any copyright in other works is determined by the default rule;
- (c) for photographs, portraits, engravings, sound recordings or films commissioned before the appointed day, any copyright will belong to the commissioning party (subject to certain exceptions). This preserves the position under the 1987 Act. For works commissioned after the appointed day, there is no special rule and the default rule applies;
- (d) the Government is generally the first owner of any copyright in an authorial work, a sound recording, a film, or a published edition of authorial works if the work is made or published (as the case may be) by or under the direction or control of the Government. The same applies to prescribed international organisations;
- (e) the rules above are subject to any contrary intention in an agreement made by the relevant party. An agreement made on or after the appointed day must be in writing.

Clause 150 provides for a new form of copyright infringement in connection with commercial dealing in devices or the provision of services, etc., that have only a limited commercially significant purpose or use other than to facilitate

access to works communicated to the public without the copyright owners' authority. Devices include both physical devices and computer programs (such as apps).

The concept of acts not constituting an infringement of copyright in the 1987 Act (also known as exceptions to copyright infringement) is replaced by the concept of a "permitted use" of copyright works, and dealt with in Part 5.

## PART 4

### PROTECTION OF PERFORMANCES

Part 4 (clauses 172 to 182) provides for the protection of performances.

The concept of an "unauthorised use" of a protected performance in the 1987 Act is replaced by the concept of an "infringing use". The 2 concepts are different substantively and in how they use certain terms. In providing what constitutes an infringing use, clause 175 draws a distinction between acts done while the performance is live, and acts done afterwards in relation to a recording of the performance. It also draws a distinction between recording the live performance (direct recording) and recording from a communication of the performance (indirect recording). The prohibition against making unauthorised recordings no longer depends on the maker's state of knowledge.

In other respects, the provisions of Part 4 are in substance similar to the equivalent provisions in Part XII of the 1987 Act. In particular, the type of performances that are protected, and the duration of protection, are unchanged from the 1987 Act.

However, not all the provisions of Part XII are included in Part 4. The concept of an "exempt recording" in the 1987 Act is replaced by the concept of a "permitted use" of a protected performance (which is not confined to recordings of protected performances) and dealt with in Part 5. The provisions on the extension or denial of protection to third countries and remedies (including the remedies against network service providers and border enforcement measures) have been consolidated with similar provisions relating to copyright (see clauses 3 and 4 and Part 6 respectively).

## PART 5

### PERMITTED USES OF COPYRIGHT WORKS AND PROTECTED PERFORMANCES

Part 5 (clauses 183 to 303) sets out the acts that do not constitute a rights infringement, i.e. an infringement of copyright or an infringing use of a protected performance. These acts are called permitted uses.

Division 1 contains general provisions on permitted uses as follows:

- (a) clause 183 provides that permitted uses are not rights infringements;
- (b) clause 184 clarifies that permitted uses are generally independent of and do not affect each other. In general, the scope of one permitted use should therefore not be construed as affecting the scope of another permitted use, and it is possible for 2 or more permitted uses to apply on the same facts;
- (c) clause 185 makes clear that the scope of a permitted use may go beyond the scope of the copyright in a work or the protection of a performance. The former scope should therefore not be used to determine the latter scope;
- (d) clause 186 provides that a permitted use may be excluded or restricted by contract, but the relevant contract term must be fair and reasonable;
- (e) clause 187 provides that certain permitted uses may not be excluded or restricted by contract at all;
- (f) clause 188 provides that a contractual choice of foreign law clause is void in certain circumstances where applying the chosen foreign law has the effect of excluding or restricting the operation of any permitted use.

Divisions 2 to 19 consolidate certain provisions of the 1987 Act and make certain substantive changes. The consolidated provisions of the 1987 Act are as follows:

- (a) Divisions 3 to 10 of Part III (exceptions to infringements of copyright in literary, dramatic, musical and artistic works);
- (b) sections 105A to 116 of Part IV (exceptions to infringements of copyright in other works);
- (c) sections 23, 193E, 193F, 199 and 201;
- (d) some aspects of the transitional provisions in Part XI, to the extent that they still apply and can be conveniently incorporated into the main provisions.

The main substantive changes are as follows.

Division 2 replaces the fair dealing provisions in sections 35, 36, 37, 109, 110 and 111 of the 1987 Act with the concept of a fair use as follows:

- (a) whether a use is fair depends on the facts, and the non-exhaustive matters enumerated in clause 191 must be considered. The factors are the same as those in sections 35(2)(a) to (d) and 109(3)(a) to (d) of the 1987 Act; the comparative jurisprudence relevant to the interpretation

of the 1987 Act therefore continues to be relevant. The factor in sections 35(2)(e) and 109(3)(e) of the 1987 Act is not included as it is not generally applicable, but it may still be considered where relevant;

- (b) fair use for the purpose of reporting news is no longer confined to any particular medium of reporting, reflecting the diverse range of media that is now used for this purpose. The work used for reporting news must be sufficiently acknowledged unless this is impossible;
- (c) clauses 193 and 194 provide for 2 cases where a use is deemed to be fair. But they do not limit the concept of a fair use. For example, fair use for the purpose of research or study is not constrained by clause 194.

Clause 204 permits non-profit educational institutions to use Internet material for educational purposes. The material must be accessible to the public free of charge and there must be sufficient acknowledgment of the Internet source as well as the work or performance used.

Under Division 4, the permitted uses relating to persons with print disabilities no longer require the payment of equitable remuneration.

Division 6 extends most of the provisions of the 1987 Act relating to libraries and archives to all public collections, and creates new permitted uses relating to public collections.

Division 8 permits copying and the communication of copies for the purpose of computational data analysis, such as text and data mining, and machine learning. Among other conditions, the user must have lawful access to the work or recording from which the copy was made, and the copy must not be used or supplied for purposes unrelated to computational data analysis.

Division 15 creates permitted uses relating to material in public registers, publicly disclosed material and data sharing within the public sector.

More generally —

- (a) the permitted uses provisions do not specifically mention acts done in relation to a part of a work or performance; clauses 39 and 40 would apply in this regard — references to an act done in relation to a work or performance include an act done in relation to a substantial part thereof;
- (b) the permitted uses provisions applicable to literary, dramatic and musical works do not specifically mention the use of adaptations of those works; instead, clause 297 provides for the use of an adaptation of those works to be a permitted use if the use of those works is a permitted use; and

- (c) where appropriate, the permitted uses of protected performances have been aligned with the permitted uses of copyright works (in particular, sound recordings).

## PART 6

### REMEDIES FOR AND BORDER ENFORCEMENT MEASURES AGAINST RIGHTS INFRINGEMENTS

Part 6 (clauses 304 to 368) provides remedies for, and border enforcement measures against, rights infringements.

Division 1 provides for the general remedies in an action for a rights infringement. It consolidates, and is in substance similar to, Division 2 of Part V and sections 253 and 254 of the 1987 Act. The main change is in clause 306, which rationalises the rule that damages may not be ordered for an innocent rights infringement.

Division 2 relates to remedies against rights infringements by network service providers. It consolidates, and is in substance similar to, sections 193B to 193DE and sections 252A to 252CF of the 1987 Act.

Division 3 provides for border enforcement measures against infringing goods. It is in substance similar to Part V, Divisions 6 and 7 of the 1987 Act (including the extension of those Divisions to performances by section 254B of that Act). The main change is that, in a case where infringing goods are seized on request, the goods can continue to be detained if any person who is entitled to do so brings an infringement action in respect of the goods. Under the 1987 Act, the action must be brought by the requestor.

## PART 7

### ADDITIONAL RIGHTS RELATING TO COPYRIGHT WORKS AND PROTECTED PERFORMANCES

Part 7 (clauses 369 to 443) provides for additional rights relating to copyright works and protected performances.

Divisions 1 and 2 provide for the moral rights of authors and performers as follows:

- (a) a new moral right of attribution is created by clauses 371 to 377 (for authors) and clauses 391 to 397 (for performers). A person who uses an authorial work or a performance in specified circumstances is required to identify the author or performer. Like the other moral rights, the right of attribution is personal to the author or performer, and applies only during the subsistence of copyright or the protection period of the performance;

- (b) the other moral rights are in substance similar to those in Part IX of the 1987 Act;
- (c) clauses 382 and 401 provide for the defence of consent and also for formal waivers of moral rights;
- (d) as moral rights are no longer framed as statutory duties, clauses 384 and 403 provide for a limitation period for bringing an action for an infringement of moral rights. An action may only be brought within 6 years after an infringement;
- (e) clauses 385(2) and 404(2) set out the matters to be considered in deciding on the appropriate remedy for an infringement of moral rights.

Division 3 relates to the protection of electronic rights management information.

Division 4 relates to the protection of technological measures.

Divisions 3 and 4 are in substance similar to Parts XIII and XIII A of the 1987 Act, respectively. The main change is that the rights owner of a protected performance (who may be the performer or an assignee) is the person who may bring the relevant action under those Divisions in relation to the performance. Under the 1987 Act, only the performer could bring the relevant action.

## PART 8

### OFFENCES

Part 8 (clauses 444 to 457) provides for offences relating to copyright works and protected performances and related matters. It consolidates sections 136, 137, 139 and 254A of the 1987 Act. The main changes are as follows:

- (a) offences with commercial elements are placed in Division 1 and subject to more severe punishments; other offences are placed in Division 2;
- (b) the new form of copyright infringement under clause 150 will be treated as an offence with a commercial element (see clause 445(b)), because of the inherently commercial nature of the infringement;
- (c) offenders who are not natural persons are subject to twice the maximum fines for natural persons (clauses 447(1)(b) and (2)(b), 452(1)(b) and (2)(b)).

## PART 9

REGULATION OF  
COLLECTIVE MANAGEMENT ORGANISATIONS

Part 9 (clauses 458 to 476) regulates collective management organisations (CMOs). CMOs are in the business of collectively managing the use of copyright works or protected performances (or both) for the collective benefit of their authors, makers, publishers, performers or rights owners. CMOs also operate schemes, available to the public in Singapore, that set out the terms on which they will grant permission to use the managed works or performances — these are called tariff schemes. The concepts of a CMO and a tariff scheme replace the concepts of a licensor and a licence scheme under the 1987 Act.

Division 1 provides for preliminary matters, including the definitions of CMOs and tariff schemes.

Division 2 establishes a class licence scheme for CMOs. The Minister may prescribe one or more class licences for CMOs; it will be an offence for a CMO to carry on business without an applicable class licence. The Intellectual Property Office of Singapore (IPOS) will administer class licences and regulate CMOs, and for this purpose it may issue financial penalties, regulatory directions and cessation orders. Provision is made for these regulatory measures to be reconsidered by IPOS and, in certain cases, appealed to the Minister.

Division 3 provides for the powers of Copyright Tribunals over tariff schemes and the grant or refusal of permission in individual cases. It is in substance similar to sections 160 to 165 of the 1987 Act. Given the creation of a regulatory scheme for CMOs, clause 475 provides that the powers of the Copyright Tribunal do not extend to ordering a CMO to do anything that contravenes the CMO's licence conditions or a regulatory direction.

Division 4 confers on a CMO the standing to make an application to a Copyright Tribunal on behalf of a rights owner whose work or performance is managed by the CMO.

## PART 10

## COPYRIGHT TRIBUNALS

Part 10 (clauses 477 to 498) provides for the constitution, functions, procedure and other aspects of the Copyright Tribunals. It is in substance similar to Part VII of the 1987 Act. The main changes are as follows:

- (a) the detailed procedure governing proceedings in the Tribunals is left to be prescribed by regulations;
- (b) the powers of the Tribunals in relation to tariff schemes (called “licence schemes” in the 1987 Act) are set out in Part 9 of the Bill;

- (c) the members and officers of the Tribunals are deemed to be public servants under the Penal Code (and therefore subject to the protections under that Code); sections 180 and 181 of the 1987 Act are therefore omitted from the Bill.

## PART 11

### MISCELLANEOUS

Part 11 (clauses 499 to 507) contains miscellaneous provisions.

Clause 501(2) provides for the General Division of the High Court to be the court with jurisdiction over civil matters under the Bill or under the 1987 Act. It is intended to be brought into force after the appointed day, together with consequential amendments to the Bill made by clause 507(10).

Clause 506 repeals the 1987 Act and clarifies that section 16 of the Interpretation Act applies in relation to the repeal. Section 16(1)(c) of the Interpretation Act provides that, unless the contrary intention appears, the repeal of an Act does not affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Act. For example, any liability for copyright infringement incurred under the 1987 Act will not be affected by the repeal of that Act. However, copyright will no longer subsist under the 1987 Act, because clause 106 provides that copyright only subsists under the Bill.

## PART 12

### TRANSITIONAL PROVISIONS

In many cases, transitional provisions have been directly incorporated into the main provisions of the Bill. Part 12 (clauses 508 to 541) contains the transitional provisions that cannot conveniently be incorporated into the main provisions.

Division 1 provides for references in existing documents and laws to the 1987 Act, etc., to be construed as references to the Bill, etc.

Divisions 2 to 6 preserve the transitional provisions in sections 26(4) and 82(2) and Parts XI, XIV and XV of the 1987 Act, to the extent that they still apply and have not been incorporated into the main provisions. Spent transitional provisions in the 1987 Act, such as sections 270, 271 and 272, are omitted.

Division 7 contains transitional provisions in respect of the Bill. The more significant provisions are as follows:

- (a) clause 533 provides that Part 3 does not revive or extend any copyright in an authorial work, sound recording or film that expired before the appointed day. This is consequential to the changes in the rules governing the duration of copyright in these works;



- (b) clause 534 provides for documents that are made or events occurring while the 1987 Act is in force. If these documents or events affected the ownership of copyright under the 1987 Act, they will also have a similar effect in relation to copyright under the Bill. For example, if an assignment of copyright under the 1987 Act was made on 1 January 2020, the assignment would be treated as an assignment of the equivalent copyright under the Bill after the appointed day. (For documents made and events occurring before 10 April 1987, clauses 514 and 524 apply);
- (c) clause 535 makes similar provisions for performances;
- (d) clauses 536 and 537 preserve the definition of “author” in the 1987 Act in respect of photographs taken while the 1987 Act is in force, as well as the presumptions relating to that definition;
- (e) clause 539 provides that (1) an agreement as to the amount of equitable remuneration payable under the 1987 Act may be made before, on or after the appointed day; and (2) in default of agreement, the amount may be decided by a Copyright Tribunal constituted under the Bill. This is relevant to the exceptions to copyright infringement under the 1987 Act which require the payment of equitable remuneration.

## EXPENDITURE OF PUBLIC MONEY

This Bill will involve the Government in extra financial expenditure, the exact amount of which cannot at present be ascertained.

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